The University of Chicago

A Study of Wage-Payment to Prisoners as a Penal Method

A DISSERTATION

SUBMITTED TO THE FACULTY
OF THE GRADUATE SCHOOL OF ARTS AND LITERATURE
IN CANDIDACY FOR THE DEGREE OF
DOCTOR OF PHILOSOPHY

DEPARTMENT OF SOCIOLOGY
IN THE
GRADUATE DIVINITY SCHOOL

BY

LORENZO DOW WEYAND

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A STUDY OF WAGE-PAYMENT TO PRISONERS AS A PENAL METHOD

L. D. Weyand

INTRODUCTION

It is estimated that 500,000 persons, of whom 90 per cent are men, are annually committed to the correctional institutions of the country.[1] In other words, one out of every 200 persons in the United States is put in jail or prison each year. This does not take into account those who are arraigned at court and are acquitted, discharged, receive a suspended sentence, or are put on probation. The bulk of those committed are for but a few days or weeks. Of 468,000 persons discharged from prison or jail in 1910, only about 25,000 were from state prisons or state reformatories; that is, only about 6 per cent of all those discharged came from what have been called the "higher institutions of crime."

These figures may include a number of persons who are counted two or more times, since "repeaters" are frequently sentenced to prison a number of times each year. A part of this population, now classed as criminal, is so only in a limited sense. There are "accidental offenders." Some of these may be included in the statistics given, but they are not criminal in any sense of the word. Some of those committing petty offenses are sentenced to pay a fine, and not having the wherewith to pay are committeed to jail. These are included also among the number. The size of this class might be materially reduced by a more efficient administering of the law. This is not a matter to be dealt with here, however. Our concern is with those committed to penal institutions.

Every person committed to a correctional institution is a ward of the state, at least during the period of his detention. Furthermore, a large proportion of the dependents of prisoners are made, by virtue of the imprisonment of the breadwinner, charges of the state or of public or private charity. The treatment that the state administers

[1] The Seventy-third Annual Report of the Prison Association of New York, 1917, p. 81.

[The study under the above title will appear in two or three successive installments. It was prepared by Dr. L. D. Weyand in partial fulfillment of the requirements for the degree of Doctor of Philosophy in the University of Chicago.—Ed.]

to those thus made dependent is a matter of importance; it determines very largely the attitude of these persons toward society.

Dr. Healy, who has studied many delinquents, says:

"One of the most appalling discoveries made in a study of offenders is that in attempting to protect itself, society so frequently ends by making matters worse . . . All sorts of punishments must be safely guarded if they are to have no ill effect."[2]

Self-respecting people do not like to talk nor hear about the injustice that may be done to those whom the state makes its wards and dependents. And so the scandals of prison administration continue unheeded. But everyone is vitally concerned with what is done to these offenders, for eventually those who enter prison must return to civil life, better or worse for the treatment they have received.

There are several features of prison administration in which improvement seems to be possible. Mr. T. M. Osborne, formerly warden of Sing Sing prison, makes nine counts against the present system of prison management. One of these deals with the compensation of prisoners.

He says that the present system of prison labor is ill-organized and inefficient and lacks any incentive to honest, hard work.

"Men are assigned to jobs entirely without regard to their preference or capacity; they are kept at the unattractive tasks by fear of punishment; they receive no return for their labor (the cent and a half a day graciously allowed by the State of New York is a joke). Such labor is mere slavery; and slave labor has always been inefficient and always will be. It is hopeless to expect men to do good work unless they can see some advantage to themselves in doing it. Men outside prison are not, as a rule, affected with what Kipling calls 'a morbid passion for work'; and human nature prevails inside the prison in this respect if in no other."[3]

The present investigation of the problem of paying prisoners seeks an answer to the following questions: Has a method of employing penal labor been developed that worked better than the one now in vogue? Can such a plan overcome the legal and financial obstacles that are to be encountered in operating a system of wage payment to prisoners? What has already been achieved that is favorable to such a scheme? What considerations favor and what oppose the wage payment to prisoners plan and what are its strength and weakness?

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[2]*Healy*, "The Individual Delinquent," p. 168.

[3]*Osborne*, "Prison Discipline and Character Building." Proceedings of the National Conference of Charities and Corrections, 1916, p. 520.

CHAPTER I

Historical Statement Concerning the Movement for Paying Wages to Prisoners

The materials for writing a complete history of the movement for a wage payment to prisoners have never been assembled. It is not our purpose to attempt to make such a collection here, but to bring together the materials that are available as an introduction to an investigation of the recent movement. Our statement must, therefore, be quite fragmentary and incomplete.

The earliest trace in the United States of a system for paying prisoners that has been found is in the "Acts and Resolves of the Province of Massachusetts Bay."

The law of 1699 provided for the establishment of houses of correction in each county where they were not already provided. These houses were to be used for "the keeping, correcting, and setting to work of rogues, common beggars, and other lewd, idle and disorderly persons; . . . and until such house or houses of correction can be erected the common prison in each county may be used for that purpose."

Persons sent to the house of correction were to be provided with suitable materials on which to work during their abode there. The selectmen of the town to which these persons belonged delivered these materials to the keeper of the house for this purpose. Children or servants, under the care of their parents or masters, but committed to the house of correction, were provided by their parents or masters with such things as were necessary for

> "the keeping of them to work and labor during their abode in said house; . . . and no persons to be committed to the said house of correction that is able to work shall in any sort be chargeable to the county for any allowance, either at their bringing in, or during the time of their abode there, but shall only be allowed for their labor and work the sum of eight pence out of every shilling they shall earn, and the overplus of such of their earnings to be unto the master or keeper of said house to account for; and if such persons are masters or heads of families, then and in such case the whole profit and benefit of their labor, or so much thereof as the court of general sessions of the peace shall think necessary and direct, shall be for the relief and support of such persons and their families."

A different arrangement was made for those unable to work.

This personal or local control of misdemeanants sentenced to these houses of correction existed concurrently with penal labor by the use

of the system of indenture throughout the greater part of the eighteenth century.[4]

During the century, however, a change was occurring in the sentiment of the people. And by the Act of June 25, 1802, the law requiring that parents and masters furnish the means of employment for wards and servants imprisoned in the houses of correction was amended so that no parent or master might furnish employment without the consent of the overseer of the prison. Indenture, which was applicable to the social and industrial condition of our colonial times only, disappeared near the close of the eighteenth century, and large numbers of convicts were now confined in the newly erected state prisons and large county prisons and penitentiaries. As a result of these circumstances, compulsory labor came to be under public or state control and conducted on public or state account. The overseer or keeper of the houses of correction and jails had complete government of the penal labor of these institutions, and the state officers, the wardens, and inspectors of the state prisons, had control of the labor of convicts in the state prisons and penitentiaries. The effect of these changes upon the plan of allowing the prisoner a share in the product of his labor will be noted later.

Another early evidence of the existence of a plan for paying prisoners is found in Pennsylvania. We are unable to trace all the steps in the development of the plan, but it seems to have been a part of the general humanitarian movement that was afoot in Pennsylvania in the latter part of the eighteenth century.

When the people of Pennsylvania took up the task of forming their constitution in the revolutionary period and of reforming their laws in the post-revolutionary period, they were deeply influenced by the mildness of the laws of William Penn.

The first constitution of the state, adopted in 1776, provided for the reform of the penal laws by the state legislature and for making punishments "in some cases less sanguinary and in general more proportionate to the crimes."

Section 39 reads:

> "To deter more effectively from the commission of crimes, by continued visible punishments of long duration, and to make sanguinary punishments less necessary, houses ought to be provided for punishing by hard labor, those who shall be convicted of crimes not capital."

The legislature took up these constitutional commands soon after the close of the Revolution and by the Act of September 15, 1786, for

[4] *Hiller*, "Development of the Systems of Convict Labor in the United States." This JOURNAL, Vol. 5, p. 244.

many crimes substituted imprisonment at hard labor as punishment in lieu of death, branding, and mutilation. This was followed by other Acts of March 27, 1789, and December 5, 1789, in the same direction, and by the Act of April 5, 1790, inaugurating that system of imprisonment at labor, which later by improvements, became known as the "Pennsylvania System" and which was largely followed in other states.[5]

That the system of penal labor included a wage payment plan is evidenced by the following facts:

In Philadelphia County the keeper (with the approval of two inspectors) obtained the materials necessary for the prisoners to work with through the county treasurer. The products of the labor were sold by the keeper, who obtained thereon a commission.

"A separate account was kept with every convict wherein he was charged with the expenses of clothing and subsistence and a proportionate part of the cost of raw materials. He was credited with the amount received by reason of his labor. If this amount was greater than his expenses he received the benefit of one-half the excess.

"Practically the same provisions were applicable to the counties other than Philadelphia. In these counties the product was to be disposed of, as directed by the county commissioners."[6]

Thus we see that prison labor in Pennsylvania really began under public or state control. As we saw above, Massachusetts had reached the same position by this period. Now it was expected that under this system the labor of prisoners would net a profit over all the prison expenses, but only deficits resulted. So the theory and practice of keeping an account for the labor and earnings of each convict fell into disuse everywhere. The state assumed the deficits, and prison industry came to be conducted entirely by, and on account of, the state.[7]

An act passed by the Pennsylvania Legislature in 1844 provides that any excess that may remain after paying the expense of maintenance shall be paid into the state treasury.

In 1847, among other things required to be reported by inspectors, sheriffs, and persons in charge of penitentiaries or jails, is whether an opportunity is afforded to the prisoners for doing overwork, or for receiving in any other manner the profits of their labor.[8] At no time,

[5] *Smithers*, "Treatise on Executive Clemency in Pennsylvania, pp. 29-30.

[6] Report of the Penal Commission. Employment and Compensation of Prisoners in Pennsylvania, p. 56.

[7] *Hiller*, Ibid, p. 246.

[8] Report of Penal Commission, p. 57.

however, was there a provision enacted that prisoners should receive any compensation.

The following description of the prisoner under the separate system dates from the year 1846. The prisoner is shut up in a room as large, perhaps, as the one he was accustomed to at home. He has his loom or his shoe-bench at hand; he is at liberty to work as long as he pleases, to rest when he is tired; he knows that if he does more than a fair day's work the *overstint* will be added to the small sum already placed to his credit and be at his disposal when he goes out.[8a]

Another description of the system is vogue in the Philadelphia Penitentiary contains the following:

"In this penitentiary was taught a trade such as shoe making, cane seating, cabinet making and weaving. Those who learned the trade were allotted a moderate task. After this was accomplished they were credited with 'overwork.' Some individual prisoners on their discharge (before 1862) were paid upwards of $250.00, which stood on the books to their credit. One prisoner on his discharge after a three years' sentence was paid $213.00."[9]

In 1883 a law was passed stating that convicts are to receive wages.[10] And an Act of 1901 specifies that when a county prison board permitted work to be done on the streets of the borough in which the jail was located, that borough was to pay the county treasurer thirty-five cents a day.[11] Finally, in 1913, an act was passed providing that the wages earned by prisoners, who have been committed for non-support, shall be payable to certain dependents, and allows a wage of sixty-five cents a day.[12]

The problem of employing the prisoners; of their discipline, and of meeting the expenses of the institutions arose soon after the beginning of the system of penal labor under state or public control and on the state or public account. During the second and third decades of the nineteenth century the contract, lease, and piece-price systems were instituted to meet these problems and continued as the prevailing methods of employing compulsory labor till the close of the century.[13] The prevalence of the contract and lease systems is shown by the fact that in 1867 the system of working the prisoners on account of the state was used in but three state prisons, viz., Clinton

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[8a]Report of a Minority of the Special Committee of Boston Prison Discipline Society, p. 45.
[9]The Journal of Prison Discipline and Philanthropy, p. 29.
[10]Report of Penal Comm., p. 59, 1883. June 13, P. L. 112, sec. 4.
[11]Report of Penal Comm., p. 61.
[12]Ibid. p. 61.
[13]*Hiller,* Op. cit., p. 230.

Prison, N. Y., and Maine and Wisconsin Penitentiaries; it was also in partial use in New Hampshire. The contract system was the prevailing method in the Northern states and the lease system in the Southern states.[14]

In 1874 the contract system prevailed exclusively in twenty state prisons, the lease system in six, and a mixed system in seven.[15] In the latter, a part of the labor from which cash revenue was derived was let to contractors and another part was managed by the authorities on behalf of the state. In 1887 the contract system was sanctioned in a pure or mixed form in twenty-eight states, and the lease system in ten states. Among all the states, fifteen permitted the use of the state account plan if it seemed to be to the interest of the state to do so. But this system usually proved to be the least profitable and the most difficult of administration, and in consequence the contract and lease system continued unrestricted until the demand for reformation and for freedom from competition between contract prison labor and free labor induced the legislature of the states to adopt the public account and other systems under public control.[16]

Organized labor, prison reformers, and penologists opposed the methods of private control of penal labor and demanded that the abuses be restricted and more protective and humane methods be adopted. The first fruits of this opposition were the substitution of the state account and piece-price systems for the contract and lease systems.

"But it was soon discovered, on the one hand, that the menacing effect of convict labor upon free labor was not removed; and on the other hand that employment was difficult to secure and that undue burdens were placed on the state agents in conducting the prison industry under the public account system to guard against unemployment and against over burdening the prison officers. A combination of public and private control was effected in the adoption of the piece-price system, and further means of employment were sought by engaging the labor of convicts in non-mechanical occupations on highways and public lands and farms, and on public works and buildings. While the prison officials found that the public account system, as it was usually conducted in prison manufactories, was inadequate and unsatisfactory and were in consequence resorting to the piece-price system, free laborers were, at the same time, discovering that so long as convict labor was entered upon the wage and price market, the menace of the subsidized industry and the low-level competition remained."[17]

[14] *Wines* and *Dwight*, "Penal Reformatory Institutions in the United States and Canada," p. 225.
[15] National Prison Congress Report, 1874, p. 293.
[16] *Hiller*, Op. cit., p. 255.
[17] *Hiller*, Op. cit., p. 263.

The first individuals to advocate the paying of wages to prisoners for their labor were Vilain, Archbishop Whatley, and Alexander Maconochie.

Vilain, who was connected with the prison at Ghent in the latter part of the eighteenth century, allowed prisoners a percentage of their earnings and an opportunity to overwork, to encourage them to work. Part of their earnings was their own to expend in the prison; part was retained, to be given to them at their discharge, so that they might not relapse into crime.[18]

The next advocate of such a system seems to have been Archbishop Whatley, of Dublin, who, in 1832, suggested that instead of sentencing the prisoner for a certain length of time, he be given a labor sentence. A part of the plan suggested is as follows in Mr. Whatley's own words:

"It will also allow them, for a certain portion of the work done, a payment in money; not to be expended during their continuation in prison, but to be paid over to them at their discharge; so that they should never be turned loose into the world entirely destitute. Instead of being sentenced to confinement for a fixed time they should be sentenced to earn, at a certain specified employment, such a sum of money as may be judged sufficient to preserve them, on their release, from the pressure of immediate distress; and orderly, decent, submissive behavior during the time of their being thus employed, should be enforced under the penalty (besides others, if found necessary) of a proportionate deduction from their wages, and consequent prolongation of their confinement."[19]

Captain Alexander Maconochie tried an experiment in prison reform at Norfolk Island. He tells us that on his arrival in 1840 he found 1,400 doubly-convicted prisoners, the refuse of the penal colonies of Van Diemen's Land and of New South Wales. "A more demoniacal assemblage could not be imagined," he says. Yet, three years after his arrival Sir George Gipps asked Captain Maconochie what he had done to make the men look so well. Said Sir George: "I have seldom seen a better looking set; they are quite equal to new prisoners from England."

There were several features to the plan Captain Maconochie instituted, but we are concerned here only with the part related to paying prisoners.

The captain gave every man a small garden. This he describes as a "boon to the industrious, but none to the idle." Those whom he "camped out in the bush" he encouraged to raise pigs and poultry,

[18] *Wines*, "Punishment and Reformation, pp. 132-137.
[19] *Wines*, Op. cit., p. 186.

"thereby improving their ration, and still more, infusing into them, by the possession of property, that instinctive respect for it which makes it safer in a community than any direct preservatives." Every man had to perform his government task besides the labor he bestowed, as he could catch an opportunity, on his garden or other interests.

Mr. Maconochie describes the system that he planned to work out as "a well arranged adversity." The essence of the system can be best presented in his own words:

"The Mark System proposes to place criminals in a state of utter poverty, destitution, and bondage from which nothing but their own steady, persevering, unflinching exertion can eradicate them. They are at the bottom of a well, with a ladder provided by which they may ascend if they will, but without any bolstering or dragging up by other than their own efforts. If they halt they are made to descend, for their maintenance from day to day is to be charged to them."[20]

He was not allowed to use his Mark System with the Colonial convicts, but only with convicts sent out direct from England, and in the case of these it was deprived of the feature that the criminal should work out his own freedom.

Mr. Maconochie cites as evidence of the success of the plan the following facts respecting the conduct of the prisoners after they left his care. He says:

"In four years I discharged 920 doubly-convicted men to Sydney, of whom only 20, or 2 per cent, had been reconvicted up to January, 1845, the latest period to which I have any returns. Of 538, whom I discharged to Van Dieman's Land in February, 1844, sixteen months afterwards, viz., in July, 1845, only 15, or 3 per cent, were under punishment, by which, I understand, had committed grave offenses."[21]

Twenty-five years after Maconochie's experiment at Norfolk Island the Royal Commission of England made the following comment:

"The experience, both of this and of other countries, has demonstrated that it is impossible to compel convicts to work hard by mere coercion, the attempt to do so having invariably failed, while it has produced a brutalizing effect on their minds, and increased their previous aversion to labor. On this ground the late Captain Maconochie, many years ago, recommended that the punishment to be inflicted upon criminals should be measured not by time, but by the amount of labor they should be compelled to perform before regaining their freedom, and he devised an ingenious mode of recording their daily industry by marks, for the purpose of determining when they should have a right to their discharge. The proposal met

[20] *Miss Mary Carpenter*, "Our Convicts," p. 103.
[21] ***Carpenter*, Op. cit., p. 99.**

with so much approval from the government of the day, that Captain Maconochie was sent to Norfolk Island for the purpose of trying the system he had recommended in the management of the convicts detained there. The experiment did not succeed, for reasons which were sufficiently obvious; but . . . the failure did not afford any reason for condemning the principle on which the scheme was founded, and, in fact, that principle has been adopted to a greater or less extent in all the various schemes of penal discipline which have been tried in the last twenty-five years. The result has been to establish the conclusion, that the hope of earning some remission of their punishment is the most powerful incentive to good conduct and industry which can be brought to act upon the minds of prisoners."[22]

The report of this commission makes no mention of compensation as a part of the plan. But a detailed description of the Mark System found in an account of the Irish Penal System of that period gives this feature also. The Mark System was introduced into Ireland by Captain Knight, but it is expressly stated that the principle was originated by the Archbishop of Dublin or by Captain Maconochie.

"The maximum number of marks that each convict can obtain monthly is nine, but they are distributed under three different headings, namely, three for discipline, that is, for general regularity and orderly demeanor; three for school, that is, for attention and a desire for improvement or industry in the school . . . Three for industry, that is, industry at work, not skill, which may have been previously acquired."[23]

A convict on entering the prison is informed that he must attain a maximum of marks during his detention to justify his obtaining a full remission of the term authorized by the regulations for the ticket of leave. If a man does not accumulate enough marks in the time it is his own fault, and he is kept back till he does.

Take the case of a man who is sentenced to three years' penal servitude, he must produce his document, and show that he is in the first class, with 90 marks made, before he can pass into the intermediate prison. He must then remain a certain time in the intermediate prison in proportion to his sentence.

There are four classes of prisoners in the stage at Spike Island, the third, the second, and the first, and the advanced "A" class. When they leave the separate prison they go into the third class. A convict may raise himself from the third to the second class in two months. To do so he would have to get the highest number of marks attainable, 18. He could pass from the second to the first class in six months, provided he attains 54 marks in that period. Then he can

[22]*Carpenter,* Op. cit., Vol. II., p. 282.
[23]*Carpenter,* Op. cit., Vol. II, p. 92.

go from the first to the "A" class in twelve months, provided he has attained a full number of marks each month. When a convict reaches the "A" class his progress is noted at A1, A2, and so on; any misconduct causes a loss of marks.

This rather lengthy explanation of the Mark System has been necessary as the "pay" of a prisoner depends on his class. A convict in separation receives no gratuity, but in the third class he receives 1d. a week, in the second class 2d., and in the first class 3d. and 4d. In the "A" class he receives from 7d. to 9d. The average amount of gratuities in Ireland is about one-half of what it is in England.[24]

The largest amount of gratuity possible for a man under a sentence of four years' penal servitude to earn is as follows: He would be two months in the third class on public works without pay; and eight weeks at a penny per week which would amount to 8d. Then he would be for six months in the second class, or 26 weeks, at 2d. a week, making 4s. 4d. Then, for the first six months that he was in the first class, he would receive 3d. a week, and during the second six months, 4d., making for the year 15s 2d. He could then enter the A class and remain there 26 weeks at 9d. a week, amounting to 19s. 6d. By that time he would be promoted to the intermediate prison where he would remain five months before his discharge. These five months at 2s. 6d. a week would net 2 pounds 12s. 6d. The total that a man of the best character could earn under the Irish system in serving a four years' sentence would be 4 pounds 12s. 2d.[25]

The directors of the Irish prisons say that "The prisoners appreciate the 'Mark System' and show a great desire to attain high classification"; that after seven years' experience of the 'Mark System' we are entirely of opinion that it has been most successful in its results."[26]

The English system differed at the time (roughly, 1860) from the Irish system in a few particulars. In England if a man's conduct was good in separate confinement, he went, on being removed to the public works, immediately into first class. And the gratuity which a man earned depended entirely upon the warden's report, checked by the superior officers. The convict received, if he had "very good," 9d. a week to his credit. If he had "good" he received 6d. per week. If he did not get "good" he received nothing. He also received, if he was in the first class 6d. a week from that; if in the second class, he got 4d. a week; and if in the third class, he got nothing. The grades

[24] *Carpenter*, Op. cit., Vol. II, p. 93.
[25] *Carpenter*, Op. cit., Vol. II, p. 102.
[26] Ibid. p. 192.

"good" and "very good" were said to be irrespective of the general conduct of the prisoners, and indicated only a good report of their work. It was not always the worst characters who did the poorest work.

A scale of payments to convicts was authorized by the English secretary of state. The following is the scale as given by Captain O'Brien in his evidence to the Select Committee of 1856.

"Five pounds and under to be paid on discharge; above five pounds and under 8, four pounds to be paid on discharge and balance at the end of two months. Eight pounds and under 12, half to be paid on discharge and half at the expiration of three months. Twelve pounds and under 20, five pounds to be paid on discharge and half the remainder in two months, and balance at the expiration of three months more."[27]

The gratuities to prisoners after their discharge were paid through the police, who investigated the character of the applicant, and if it was unsatisfactory did not pay them. In one year 240 pounds were so paid to 58 discharged prisoners through the police, and the gratuities of the others were paid to the Prisoners' Aid Society. One man rereceived in two payments, 15 pounds 17s. 9d.; another received 10 pounds, and another 7 pounds 10s.

The gratuities of the English system provoked considerable unfavorable comment in their day.

Sir Richard Mayne expressed the belief that these gratuities diminished any deterring effect that sentences of penal servitude might otherwise have had. He regarded them even as an inducement to crime and cited the following incident as evidence of that fact: ". . . A man, two days ago, when he received his gratuity, stated that he knew that several persons in the agricultural district were very glad to get into prison, as they were so much better taken care of, and they had no fear whatever of it. . . ."[28]

Captain Cartwright in a letter to the commissioners mentions the case of ten men who were convicted of arson at the Gloucester Winter Assizes, and sentenced to six years' penal servitude. "Many of these men made distinct statements that their object was to get a sentence of penal servitude, as they should thus learn a trade, and get plenty of money."[29]

F. S. Rawlins wrote to the Times in 1864 of a man who had been three years and four months in Dartmouth prison. During this time he had earned 12 pounds 9s. 7d. besides his comfortable keep.

[27] *Carpenter,* Op. cit., Vol. I, p. 136.
[28] *Carpenter,* Op. cit., Vol. I, p. 137.
[29] Ibid., p. 295.

Thus we see that the penal wage paying system began in Massachusetts Bay Colony, where offenders were punished either by imprisonment in a local house of correction or in a county prison, or by being placed under some person in indenture to work out their fines. Even in the house of correction the offenders were frequently under the surveillance of some individual other than the keeper of the prison. Where the relationship was so local and personal it was easy and natural to provide for a wage payment as a part of the scheme.

In Pennsylvania this personal relationship was lacking, but the local element was present at the beginning of penal labor there, and provision was made for prisoners to receive a share of the fruits of their labor.

A change in social and economic conditions resulted in the state or county taking control of large numbers of prisoners, confining them in large institutions and directing their labor on public or state account. There was no change in purpose. It was still expected that the labor would net a profit and that part of it should go to the convict. But a change of purpose is easily to be accounted for when deficits result and the state has to assume the burden of these. The welfare of the convict was soon lost sight of and contract and lease systems were adopted for disposing of penal labor.

But no system that loses sight of the well being of the convict can prove satisfactory to society, however paying it may be in money. So with a reconsidering of the purposes of penal labor in the light of statistics on recidivism and criminality, men began to cast about for methods that would save convicts from a criminal's career. Notable among the efforts along this line is the experiment of Captain Maconochie on Norfolk Island. History seems to have proved the worth of the principles he advocated. This plan involved a wage payment. With this review of the movement before us we may now consider the recent efforts to reinstate this system and to survey the present situation in the United States with reference to payment of prisoners for their labor.

CHAPTER II

The Legal Situation in the United States with Reference to Paying Prisoners

Perhaps there is no better indicator of sentiment in certain fields than that of statute law. This is the case with the subject of paying prisoners. The existence of a statute sanctioning the paying of a wage to prisoners in certain or all the reformatory and penal institu-

tions of a state is an indication that the sentiment of the people of that commonwealth approve of some such scheme. The following review of the laws of the states shows how the tide of sentiment is flowing.

Alabama.—The State of Alabama allows its convicts to work for themselves after the performance of their daily tasks, in such a manner as may be prescribed by the rules of the Board of Inspectors. The proceeds of such labor is to be disposed of in such a way as the Board shall provide.[30]

Each convict must be discharged from the penitentiary at the expiration of his term of confinement. He must be furnished with a decent suit of clothes and sufficient money to enable him to reach his destination. The amount of money must not exceed ten dollars.[31]

California.—This state is permitted to indemnify a person for the pecuniary injuries sustained through false arrest and imprisonment.[32]

The State Board of Prison Directors is authorized and empowered by law to provide for assisting paroled and discharged prisoners and to secure employment for them. For this purpose it may employ one or more persons, may purchase tools, or give any other assistance that in the board's judgment may be necessary for carrying out the objects and spirit of this law.[33]

Colorado.—The Board of Penitentiary Commission is empowered by law to adopt a special rule applicable solely to convicts employed on public works. This rule grants to convicts so employed additional good time allowance, conditioned upon their good behavior and cheerful compliance with all rules that may be made by the board or superintendent for the management and control of convicts so employed.

Every able-bodied convict is to be put to work and kept at the work most suitable to his or her capacity and most advantageous to the State of Colorado and which may least conflict with the interests of the free labor of the state, during his or her confinement. The earnings of such convict, after deducting a sufficient amount to pay and satisfy the cost of maintenance and retention, is to be given to the family of the convict, or dependents if there are any. If there are none, the sum accumulated shall be paid to the convict himself upon his discharge from the penitentiary.

When any convict is discharged from the penitentiary he is given

[30]The Code of Alabama, Vol. III, p. 403, sec. 6351, 1907.
[31]*Clay's* Digest, "Laws of Alabama," pp. 207-408, sec. 6554.
[32]Statutes and Amendments, Laws of California, p. 246, sec. 5, 1913.
[33]Statutes and Amendments, Laws of California, p. 919, sec. 1.

the sum of five dollars, a new suit of clothes if he needs it, and a railroad ticket to the railway station which is at or nearest to the county seat of the county in which the crime was committed and from which the convict was sent. If the convict so desires he may receive from the warden five dollars in lieu of the railroad ticket; if the distance which such ticket would carry him should exceed ninety miles, he shall then receive from the warden ten dollars and no railroad ticket.[34]

Connecticut.—Any person imprisoned in the state prison, who, by reason of good conduct and upon the recommendation of the warden, shall be deemed worthy by a majority of the directors, shall receive as compensation for services performed by him, a sum not to exceed ten cents per diem during the term of his imprisonment. Such sum shall be deposited in some savings bank, state bank or trust company, in the state under the direction of the board of directors and the warden, and with the interest accumulated thereon, shall be paid to such convict by the warden upon his discharge from said prison. The warden may pay to such person, with the advice and consent of the directors, during the term of such imprisonment, such sum as may, in his opinion, be necessary for the welfare of such convict.[35]

Hawaii.—Any prisoner who has undergone a sentence of a year or more in the territorial prison, in case that person has not sufficient funds for present purposes, shall be furnished by the warden with five dollars and clothes costing not more than ten dollars.[36]

Idaho.—Sec. 1. The probate judge of each county shall have authority, hereinafter provided, to make provision for the partial support of women whose husbands . . . are *prisoners* confined in the Idaho State Penitentiary . . . when such women are poor and are mothers of children under the age of fifteen years, and such mothers and children reside in such counties.[37]

Illinois.—The warden furnishes the discharged convict with a suitable suit of clothes, transportation to the place of conviction, or the equivalent in money, and in addition ten dollars in money.[38]

The commissioners are authorized, whenever they shall deem it expedient, to so make contracts for letting the labor of convicts or to permit each convict who performs his task in a workmanlike manner to have certain amount of labor allotted to him each day for a day's

[34]Rev. Statutes of Colorado, 1919, p. 1165, 66, secs. 4888, 82, 84, 85.
[35]The General Statutes of Connecticut, Revision of, 1918, Vol. I, p. 616.
[36]Laws of the Territory of Hawaii, p. 34, sec. 1614a.
[37]General Laws of the State of Idaho, p. 293, chap. 135. Passed at the Thirteenth Session of the State Legislature, 1915.
[38]Annotated Statutes of the State of Illinois, p. 4682, 1913.

work, and the time gained after the performance of such task may be occupied in labor for contractors, the labor to be at the same rate or not less than that which may be agreed upon between said contractors and the convict. If any convict who has performed overwork is unable to perform full work on another day or days, no deduction shall be made from his overwork earnings on that account.

It shall be the duty of the officer in immediate charge of the convicts to take daily account of the overwork and report the same to the clerk at the end of each month. The commissioners shall receive money so earned the same as the money due the state from contractors, and an accurate and detailed account of all such moneys, by whom earned, time when, amount, and to whom payable shall be kept in a book provided for that purpose.

The contractors are required to pay the entire amount belonging to the convict for overwork at the end of each month. Each convict at the end of his term of confinement may draw his portion from the "overwork fund." He may at any time with the approbation of the warden, draw from the commissioners the amount due him or any part of it for the purchase of magazines or books for his own use. The convict may also, by order of the commissioners, at any time have money due him transmitted to his family or friends for their use or to be invested for him,[39] but for any other use the convict is prohibited from drawing money from this fund until discharge.[40]

Indiana.—Whenever any person is discharged from the Indiana reformatory or state prison, the superintendent or warden is authorized to furnish him with a railroad ticket to any place he may desire to go, not farther from the institution than the place from which he was sentenced. He shall also give him ten dollars in money, a desirable suit of clothes, and from the first day of November to the first day of April, an overcoat, the cost of the suit not to exceed six dollars and that of the coat not to exceed five dollars.

It is the duty of the superintendent or warden to furnish to all paroled persons clothing and transportation as in the case of discharged persons. But if the paroled person receives his final discharge while away from the institution of the state issuing the discharge, the provisions of this act do not apply to such persons at the time of final discharge.[41]

[39]Annotated Statutes of the State of Illinois, p. 4685.

[40]The details of the situation in Illinois are discussed fully under a separate head.

[41]*Burn's* Annotated Indiana Statutes, Vol. 3, p. 1031.

Iowa.—The Board of Control of Iowa is permitted by law to allow prisoners who work upon the highways of the state such part of the earnings received by the prisoners as the board shall deem just and equitable over and above the cost of maintenance. It may deduct a part of such earnings and forward it direct to the family or persons dependent upon such prisoner for support. The board and warden may also provide for deposit of the earnings of such prisoners in a bank or banks to be given said prisoners upon their release. Part of the money may be allowed them for current expenses.

On discharge the warden furnishes the convict with transportation to a point nearest his home or to any place of like distance in the state, a suit of common clothing and not less than three nor more than five dollars in money.[42]

The prisoner released on parole is provided with money, clothing and transportation to the place of employment, but no further allowance is made to him on his final discharge if this is granted while he is on parole.[43]

The Mother's Pension law of Iowa also makes provision for a form of compensation to the dependents of prisoners as follows:

Mother's Pension.—Sec. 254, a20. . . . If the court finds that the mother of such dependent or neglected child is a widow and if the court further finds that such mother is poor and unable to properly care for said child, but is otherwise a proper guardian, and that it is for the welfare of such child to remain at home, the court may enter an order finding such fact and fixing an amount of money necessary to enable such mother to properly care for such child . . .[44]

Sec. 254, a28. When considered the widow. Any mother whose husband is an inmate of any institution under the care of the Board of Control, shall, for the purposes of this act, be considered a widow, but only while such husband is so confined.[45]

Kansas.—The Board of Directors of the State Penitentiary and State Reformatory are directed to pay out of the general funds belonging to the respective institutions to each convict employed by the state a sum of money, and such wage shall not be less than ten cents per day and may be raised from time to time above ten cents, where in the judgment of the superintendent or Board of Directors the work is of such quality and value as to warrant a greater amount. But in no case is the amount so paid to exceed twenty-five cents per day for

[42]Acts and Joint Resolutions, Thirty-fifth General Assembly of the State of Iowa, p. 133, 1913. Supplement to the Code of Iowa, p. 1935, 1913.
[43]Supplement to the Code of Iowa, p. 1171, 1907.
[44]Supplement to the Code of Iowa, p. 118, 1913.
[45]Ibid., p. 119.

each day's work performed by the convict above the regular daily task assigned by the warden of the penitentiary or the superintendent of the reformatory, while in such institution. The amount of money earned by the convict shall be placed in a separate fund to his credit to be forwarded by the Board of Directors at the close of each month to any person or persons of his immediate family who are dependent upon such convict wholly or in part for their support. This dependence must, however, be shown by a written statement signed by the county commissioner and probate judge of the county in which such dependent persons live. If there are no such persons dependent upon the convict for support, then the fund shall accumulate to the individual credit of the convict until the close of his term, when the Board of Directors shall use a portion of it to supply the convict with suitable clothes. The remainder is given him to assist him in getting a new start in life. But the board or superintendent may use a portion of this fund for the purchase from time to time of small necessities for the convict without dependents.[46]

The work of prisoners employed upon the public roads and highways of any county or the streets and alleys of any town or city is paid for at the rate of one dollar per day. This sum is paid to the warden who deducts sufficient amount to cover the expense of maintenance and retention and the remainder he gives to the family of the convict, or dependents, if there are any. If there are none, the sum accumulated is paid to the convict upon his discharge from the penitentiary.[47]

Upon the release of any prisoner from the penitentiary the warden shall provide him with suitable clothing, ten dollars in money, and transportation for him to his place of employment. The same provisions pertain to any prisoner discharged by expiration of his maximum sentence, save that he shall procure transportation for said prisoner to his home, if within the state; if not, to the place of his conviction, or to some other place not more distant, selected by the prisoner.[48]

Mother's Pension.—Be it enacted by the Legislature of the State of Kansas: Sec. 1. That Sec. 5545 of the General Statutes of 1909 be amended so as to read as follows: Sec. 5545. That the Board of County Commissioners may in their discretion allow and pay to poor persons who may become chargeable as paupers, and who are of mature years and sound of mind, and whose general character will probably be benefited thereby, and also the parents of idiots and of children otherwise helpless, requiring the attention of their parents, and who are unable to provide for

[46]State of Kansas Session Laws, 1913, p. 524.
[47]Session Laws of the State of Kansas, 1913, p. 393.
[48]General Statutes of Kansas, 1909, p. 1462, sec. 6843.

said children themselves, such annual allowance as will not exceed the charge of their maintenance in the ordinary mode, the said board taking the usual amount of charges in like cases as the rule for making such allowance; provided, that in any case where the mother of any child or children under the age of sixteen years shall have the sole care and custody of such child or children by reason of such mother being a widow, divorced, or by reason of the husband of such mother being physically or mentally unable to earn a living for himself and family, or by reason of his being lawfully confined in any penal institution, or by reason of the husband of such mother having at all times for three months last past abandoned or deserted such mother without just cause, and where such mother has been an actual bona fide resident of the county for one year next preceding her application, and where such mother is a provident woman of good moral character, and a fit person to have the care and custody of such child or children . . ."[49]

Louisiana.—The leases are required to furnish the convict at his or her discharge ten dollars and a coarse suit of citizen's clothes at the expense of the institution, if the board of control so authorizes.[50]

Maine.—The master of the house of correction is required to keep an exact account of the earnings of each prisoner, and of the expense incurred for commitment and maintenance. He specifies the time of the convict's commitment and liberation and presents these on oath to the overseer of the poor of the town where such house is established, annually and oftener if directed. The town may recover the amount of such expense incurred for commitment and maintenance.

After this deduction has been made, if there is any excess from the prisoner's earnings such excess is paid by the overseers of the poor to or for the benefit of dependent or kindred of said prisoners.[51]

On discharge any convict who has conducted himself well during his imprisonment may receive from the warden a sum not exceeding ten dollars and, if he requests it, a certificate of good conduct. He is also provided with decent clothing.[52]

The sheriff of any county in the State of Maine may, in his discretion, give a prisoner about to be discharged from the jail over which he has charge a sum of money not exceeding two dollars and wearing apparel not exceeding the value of ten dollars. He may also furnish the discharged prisoner a railroad ticket to any place, the fare of which does not exceed the sum of eight dollars.[53]

[49]State of Kansas Session Laws, 1915.
[50]Constitution and Revised Laws of Louisiana, Vol. II, p. 1316.
[51]Act and Resolves of the '73 Legislature of the State of Maine, p. 114, 1907.
[52]Revised Statutes of the State of Maine, p. 992.
[53]Acts and Resolves of the Sixty-seventh Legislature of the State of Maine, p. 128, 1913.

Michigan.—The State of Michigan provides for the family of a deserting husband who has been sentenced to serve a term of imprisonment for such desertion as follows: If funds are available the warden of the state prison or the superintendent of the Detroit House of Correction, in which the convict may be, is authorized to pay over to any of the superintendents of the poor of the city or county in which his wife or children reside, the sum of two dollars and fifty cents per week for each child under fifteen years of age. If there be no wife and there are children under fifteen years, the sum of two dollars and fifty cents per week for the oldest and an additional sum of one dollar per week for each of the other children under said age is to be paid.[54]

The Board of Control and wardens of the several state prisons in which manufacturing is done on state account are permitted, if it seems wise to them, to direct the payment to prisoners engaged in manufacture on state account, of a proper amount for overtime. This compensation must not exceed fifteen cents per day to any prisoner thus employed. The times and amounts of such payments are determined by the Boards of Control and wardens of the prisons and are made from the sale of manufactured product of the industry in which such convicts are engaged.[55]

The warden furnishes the discharged prisoner with clothing, if he is not already provided for, not exceeding ten dollars in value and such sum of money, not exceeding ten dollars, as the warden may deem necessary and proper and the board of the prison may, in its discretion, furnish such convict with a further sum of money not exceeding fifteen dollars whenever in the opinion of such board the necessities of the discharged convict are such as require the same.

Minnesota.—Minnesota authorizes and empowers the Board of Control to provide for the payment to prisoners confined in the state prison or in the state reformatory, of such earnings as it may deem proper. Such earnings are to be paid out of the fund provided for the carrying on the work in which the prisoner is engaged when employed on state account, and by the contractor when the prisoner is employed under contract.

Any money arising under the above conditions shall be under the control of the state board, to be used for the benefit of the prisoner, his family or dependent relatives, according to the regulation of the board. Should any prisoner willfully escape from the state reform-

[54]Public Acts of the Legislature of the State of Michigan, p. 331, 1913.
[55]*Howell's* Annotated Statutes of the State of Michigan, p. 58, 1913.

atory or prison, or become a fugitive from justice, or commit any breach of discipline at either institution, the board may in its discretion cause the forfeiture of all earnings remaining to the prisoner's credit, and cause the same to be replaced in the fund from which it was originally taken.[57]

The commissioners in charge of county work or correction farms may furnish aid weekly or less often, if necessary, to the family of any prisoner confined in such work farm, or to the guardian or other person or association in control and responsible for the care and support of any dependent child or children of said prisoner. Such aid shall not exceed fifty cents for each day's labor performed by the prisoner on the farms or elsewhere in the county.[58]

Minnesota Mother's Pension.—Chapter 130, H.F. No. 2. Be it enacted by the Legislature of the State of Minnesota: Sec. 1. Court may order county to pay mother ten dollars per month for support of child, where the latter is a widow, or husband is in penal institution or insane asylum, or unable to support family . . . Whenever any child under the age of fourteen years shall be found to be dependent or neglected within the meaning of Chapter 285, General Laws, 1905, or Chapter 232, General Laws, 1909, or Chapter 27, Revised Laws, and it shall also appear that the mother of such child is a widow, or that her husband, if living, is an inmate of a penal institution or an insane asylum, or because of physical disability is unable to support his family, and that the dependent or neglected condition of such child is due wholly or in part to poverty of the mother and the want of adequate means to properly care for such child and the mother of such child is otherwise a proper person to have the custody of such child and that the welfare and best interests of such child will be subserved by permitting it to remain in the custody of its mother, the court may, in its discretion, file an order finding and determining such facts, and therein and thereby fix and determine the amount of money, not exceeding ten dollars per month, which it deems necessary for the county to contribute towards the support of such child in her own home.[59]

Missouri.—Every prisoner confined in the Missouri State Penitentiary, who performs the work assigned to him by the officers, acceptably, and conforms to the rule and discipline of the institution, is allowed as a wage five per cent of his daily earnings for the peni-

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[57]Revised Laws of Minnesota, p. 1142, 1905.
[58]General Laws of Minnesota, p. 242, 1913.
[59]General Laws of Minnesota, 1913, p. 148.
Note.—Discharge allowance for United States prisoners in Minnesota Prison: On the discharge of any United States prisoners from Minnesota Prison, the warden shall provide such person with one plain suit of clothes and five dollars in money, for which charge shall be made and allowed in the accounts of said prison with the United States. This provision applies only to persons sentenced for a period of six months or more.
Eighteenth Biennial Report, Minnesota State Prison, 1913-1914, p. 118.

tentiary. The sum thus accruing to the prisoner's credit is set apart at the end of each quarter.

A sum not less than fifteen dollars is allowed to accumulate for the use and benefit of each prisoner after release from penitentiary.

All over this amount may be used for the support of the prisoner's family or other persons rightfully dependent upon the prisoner, or for the purchase of necessities not furnished by the institution or for other necessary expenses of the convict. The money is paid to relatives or dependents of the prisoner only in case they are in need. In case of life prisoners no sum is accumulated from their earnings. The entire five per cent of the earnings of every such convict is to be used for the support of rightfully dependent persons. If the life prisoner has no one dependent, his entire earnings go into the gross earnings of the institution.

The warden and inspector may, in making contracts, permit each convict who performs his work in a workmanlike manner to have a certain reasonable amount of labor assigned him for each day as a day's work. The contractor and the warden determine this amount. The time gained after the performance of such tasks may be employed in labor for such contractor at a rate agreed upon by convict and contractor, but at a rate not less than that paid to the state. If for any reason the deduction from any overwork which he has performed shall be made, the officer in immediate charge of the convicts keeps account of the overwork earnings and returns the record of it to the state. A record of it is also furnished to the convict at the end of each month. The state collects this money the same as its own, but the convict is permitted to draw any part of it at any time with the consent of the warden for the purchase of books or magazines or for remitting to his family. For any other purpose the convict is forbidden to draw any money until his discharge.

The inspector may, upon the recommendation of the warden, at the end of each month, cause to be placed to the credit of any convict engaged in doing work for the state, and who shall not be guilty of any infraction of the rules of the prison, and who shall not have lost any time the preceding month, such limited amount as in their judgment will encourage a more cheerful performance of work. This sum is subject to the same rules as apply to overwork.[60]

Missouri Mother's Pension.—Chapter I. In every county now containing or that may hereafter contain 250,000 inhabitants and less than 500,000 inhabitants and in which a Juvenile Court is now being held or

[60]The Revised Statutes of the State of Missouri, Vol. I, pp. 579-581, 1909.

may hereafter be held, it shall be the duty of the County Court to provide out of moneys in the county treasury, not already appropriated, an amount sufficient to meet the purpose of partial support of women whose husbands are dead, or whose husbands are prisoners, when such women are poor and are mothers of children under the age of fourteen years, and such mothers and children reside in such counties.

Section II. Monthly allowance. Ten dollars a month for one child under fourteen years and if more than one child under the age of fourteen yaers it shall not exceed the sum of ten dollars a month for the first child and five dollars a month for each of the other children under the age of fourteen years.[61]

Mississippi.—The State of Mississippi pays to each convict dismissed from the state penitentiary ten dollars in cash and also provides him with a suit of clothes.[62]

Montana.—This state provides that whenever any convict is discharged from imprisonment the warden must provide him with proper and sufficient clothing, at a cost not exceeding twenty-five dollars, and must pay him in addition five dollars in money.[63]

Montana Mother's Pension.—Section 1. Every dependent child under the age of fourteen years whose father is dead or an inmate of some Montana state institution of charity or correction is entitled to financial aid, said aid to be given to the mother of said child or children.

Section 2. Amount of allowance. Ten dollars per month if there is one child, seven and a half per month for the second child and two dollars and a half per month for each additional child, said money to be paid to the mother of said child or children.[64]

Nebraska.—Revised Statutes of Nebraska for 1913 read as follows:

Section 139. State convicts, Employment of. . . . Under the direction of the Board of Commissioners of State Institutions, the warden shall employ as many prisoners as necessary in the manufacture of all such articles used by state institutions as it may be found practicable to manufacture without prejudice to the inmate labor of other state institutions; and he may manufacture for sale generally any article whose manufacture will involve, in the opinion of said board, a minimum of competition with free labor. To this end the warden shall procure machinery, prepare shop room, and employ such persons as may be necessary to instruct the prisoners in such manufacture.

The Board of Commissioners of State Institutions may let the services of the prisoners outside of the Penitentiary to counties, cities, villages

[61]Laws of Missouri, Forty-sixth General Assembly, 1911, pp. 120-121.

[62]Biennial Report of the Mississippi State Penitentiary for the Years 1907-1909.

[63]The Revised Codes of Montana, 1907, p. 894.

[64]Laws, Resolutions and Memorials of the State of Montana. Passed by Fourteenth Session, 1915, pp. 112-113.

within the state and to other state institutions, for the purposes hereinafter set forth. Such counties, cities, villages or state institutions shall furnish board and lodging to such prisoners and shall pay to the warden for each prisoner so furnished such sums as shall be agreed upon by the contracting parties. But only such prisoners shall be permitted to work outside the penitentiary as have proven themselves trustworthy and who give the warden a pledge that they will make no attempt to escape.

Section 140. The services of prisoners shall not be let to any individual, firm or corporation, within or without the penitentiary, except as provided in this act.

All labor for the erection of buildings for the penitentiary or for any other state institution and all repairs to present buildings, whenever practicable, shall be performed by prisoners under the direction of proper instructors and foremen skilled in the trade, if there are no persons qualified to instruct or superintend the same.

All labor performed by prisoners as herein provided shall be charged to the institution where the same is performed at a rate to be fixed by the Board of Commissioners of State Institutions.

Section 142. Any county, city or village in the state, through its proper officials, may contract with the warden, subject to the approval of the Board of Commissioners of State Institutions, for prison labor in building, repairing roads or highways, streets, or alleys or in the erection of public buildings, or the improvement, repair and laying out of any parks or public grounds, at a wage to be agreed upon; and such county, city, or village shall provide for the board, lodging, and safe keeping and guarding of such prisoners to the satisfaction of the warden and said Board of Commissioners.

Section 143. The warden shall keep account of the earnings of each prisoner, the nature of the crime for which he is imprisoned and his deportment, and as a matter of discipline, may make deductions from such wages for a violation of the rules, want of propriety or any misconduct.

Section 144. The warden shall be charged with the duty of making the state penitentiary as nearly self-sustaining as possible and with providing sufficient labor for the prisoners as provided for in this act, to enable them to earn something for themselves and their families and to promote their physical and moral welfare. Provided, if it is impossible to obtain the labor and the employment for prisoners as herein before provided in this act, and prisoners are therefore forced into idleness, then in such case the warden shall, subject to the approval of the Board of Commissioners of State Institutions, enter into contracts with any person, firm or corporations to provide labor for idle prisoners upon such terms and conditions as may be for the general physical and moral welfare of said prisoners and a profit to the state; but such contract shall be entered into for the employment of said prisoners in such district only as, in the opinion of said board, involves a minimum of competition with free labor.

Section 146. One-half of the amount credited to each convict or person confined shall constitute a fund for the relief of any person or persons dependent upon such convict and shall be paid upon the order of the Board of Commissioners of State Institutions to the person or persons

establishing such dependency to the satisfaction of said board, at such time or times as said board may order.

Whereas an emergency exists, this act shall take effect and be in force from and after its passage and approval.[65]

Nevada.—Convicts detailed for work upon the public roads are allowed ten cents for each day's labor. The fund accumulated by this allowance is paid to the convict on his discharge or release on parole and is in addition to the sum of money ordinarily given to discharged convicts.

By petition the convict may have paid out of the sum to his credit, according to the discretion of the board, any portion he chooses for the support of the dependent wife, children or parent if such are in distress.[66]

Whenever any prisoner is dicharged from the state prison the warden furnishes him twenty-five dollars in coin.[67] The same amount is advanced by the warden to each paroled prisoner, subject to the authorization of the boards.[68]

Nevada Mother's Pension.—Section 1. It shall be the duty of the county commissioners of each county in the state, and they are hereby empowered and authorized, to provide funds in an amount sufficient to meet the purposes of this law, for the support of widows whose husbands are dead or are inmates of a penal institution . . . and who are unable to support their children, when such women are destitute or are dependent upon their own efforts for the maintenance of their children and are mothers of children under the age of fifteen years, and such mothers and children reside in such counties in the state.

Section 2. Allowance not to exceed fifteen dollars per month when mother has but one child under fifteen years of age, and if she has more than one child under the age of fifteen years, it shall not exceed the sum of fifteen dollars a month for the first child and five dollars a month for each of the other children under the age of fifteen years.[69]

New Mexico.—Upon the release of any prisoner by parole or discharge the superintendent shall provide him with suitable clothing, five dollars in money, and a railroad ticket to the place of conviction.[70]

New York.—Every prisoner in a New York institution (penitentiary or reformatory) who is entitled to a diminution of his sen-

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[65]Laws, Resolutions, and Memorials, State of Nebraska, at the Thirty-fourth Session, 1915, pp. 303-304.

[66]Statutes of the State of Nevada, pp. 577, 1913.

[67]Revised Laws of Nevada, Vol. 2, p. 2100.

[68]Revised Laws of Nevada, Vol. 2, p. 2111.

[69]Statutes of the State of Nevada, Twenty-seventh Session, 1915, pp. 151, 152, and 153.

[70]Acts of the Legislature, Assembly of the Territory of New Mexico, p. 77, 1909.

tence by good conduct may receive compensation from the earnings of the institution. This compensation is to be graded by the agent and warden of the institution in which the prisoner is, but in no case shall the pay allowed to prisoners exceed ten per cent of the earnings of the institution. The difference in the rate of compensation shall be based both on the pecuniary value of the work performed, and also on the conduct of the prisoner. For misconduct or violation of the rules or regulations of the institution, he shall forfeit out of the compensation allowed fifty cents for each day of good time so forfeited; fines for various offenses may be levied against the prisoner's earnings.

The prisoner during his confinement may draw upon the surplus standing to his credit only upon the certified approval of the superintendent of state prisons for disbursement by the agent and warden of the prison or superintendent of the reformatory to aid dependent relatives of such prisoner, or for such other purposes as the superintendent of state prisons may approve; any balance to the credit of the prisoner at the time of his conditional release is subject to the draft of the person in such sums and at such times as the superintendent of state prisons shall approve. But at the time of his final release the whole amount of the credit balance is subject to his draft at his pleasure. Any prisoner violating his conditional release thereby forfeits any balance. And the amount so forfeited is transferred to the fund in aid of discharged prisoners.[71]

North Dakota.—All prisoners when employed, either inside or outside of the penitentiary, shall receive not less than ten or more than twenty-five cents per day for work actually performed, as may be awarded by the warden, according to services rendered. The warden may assign a reasonable daily task to be performed by each convict and the compensation of such convict shall be in proportion to the amount of work he performs. In case he performs the daily task assigned him he receives the maximum compensation provided.

The money so earned shall be placed to the credit of such prisoner and sent monthly to anyone dependent upon him for support, as determined by the field officer. However, a fund of fifty dollars must be accumulated during the term of confinement and retained to be given to the prisoner when his term expires or he is discharged. Twenty-five dollars is to be given to him when he leaves the prison. If he conducts himself properly the warden sends him the balance, not

[71]Annotated Consolidated Laws of the State of New York, pp. 4338-4339.

to exceed twenty-five dollars, when in need, or at the end of three months after leaving the penitentiary. If he does not conduct himself properly, as determined from the report of said field officer, the remainder is to be sent to those dependent upon him.

In case the prisoner has no dependents to support, his earnings are to accumulate, and twenty-five dollars is paid to him when he is discharged. Twenty-five dollars more is to be paid to him if he conducts himself properly and becomes hard up at any time. The field officer is the judge of such matters. Another sum not to exceed twenty-five dollars is to be paid to the prisoner at the end of six months upon the recommendation of the field officer, that he is satisfied with the conduct of such prisoner during said period. Should the prisoner after leaving prison be arrested and convicted and sentenced to prison again the balance of the fund to his credit shall be forfeited and go into a fund created for the benefit of prisoners confined in the penitentiary.[72]

Ohio.—For the purchase of material and machinery used in manufacturing industries, for paying of compensation to employees necessary to carry on said industries, and for providing a fund out of which prisoners confined in penal institutions may be paid a portion of their earnings in the manner hereinafter provided, an especial appropriation shall be made to be known as the manufacturing fund. Receipts from the sale of manufactured articles shall not be turned into the state treasury, shall be credited to said fund, to be used for the purchase of further material, machinery and supplies for such industries for payment of compensation to employees necessary to carry on said industries, and for payment to convicts or their families as hereinafter provided, and the board of administration shall make a four-monthly report of the products, sales, receipts, disbursements and payments to and from said fund to the state auditor.

The board of administration may place to the credit of each prisoner such amount of his earnings as it deems equitable and just, taking into consideration the character of the prisoner, the nature of the crime for which he was imprisoned and his general deportment. Such credit shall not exceed the difference between the cost of maintaining such prisoner and the amount his labor, in the opinion of the board of administration, is reasonably worth. The earnings so credited to such prisoner shall be paid to him or his family out of said manufac-

[72]Laws passed at the Thirteenth Session of the Legislative Assembly of the State of North Dakota, pp. 352-353, 1913.

turing fund at such time, in such manner and in such amounts as the board of administration directs. The board of administration may cancel all or any portion of the earnings credited to a prisoner for violation of rules, want of propriety, or any other reasons which in its judgment justify such action.[73]

Ohio Mother's Pension.—Section 1683-2. For the partial support of women whose husbands are dead or become permanently disabled for work by reason of physical or mental infirmity, or whose husbands are prisoners . . . when such women are poor, and are mothers of children not entitled to receive an aid and schooling certificate, and such mothers and children have been legal residents in any county of the state for two years, the juvenile court may make an allowance to each of such women as follows: Not to exceed fifteen dollars a month when she has but one child not entitled to an aid and schooling certificate, and if she has more than one child not entitled to such certificate, it shall not exceed fifteen dollars a month for the first child and seven dollars a month for each of the other children not entitled to an aid and schooling certificate. The order making such allowance shall not be effective for a longer period than six months, but upon the expiration of such period, said court may from time to time extend such allowance for a period of six months or less. Such homes shall be visited from time to time by a probation officer, agent of an association or charities organization, a humane society, or such other agent as the court may direct, provided that the person who actually makes such visits be thoroughly trained in charitable relief work, and the report or reports of such visiting agent shall be considered by the court in making such order.

Section 1683-6. The provisions of this act shall not apply to any women who, while her husband is in prison, receives sufficient of his wages to support the child or children.[74]

Oregon.—Any person convicted of family desertion is to be compelled to work upon the county roads or some other public work of the county, and the county is to pay for the support of his wife or child at the rate of one dollar per day of the sentence served, except Sundays and holidays.[75]

Upon the discharge of any convict from the penitentiary, it shall be the duty of the warden to see that such discharged or paroled convict is properly clothed, and in all cases where a convict is finally discharged it shall be the duty of the warden to pay such discharged convict the sum of five dollars.[76]

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[73]Ohio Legislative Acts, Vol. CV, 1915, Sec. 1866.

[74]Ohio: Joint Resolutions, Eighteenth General Assembly, Vol. CIII, 1913, pp. 877, 878, and 879.

[75]General Laws of the State of Oregon, p. 55, 1913.

[76]General Laws of the State of Oregon, p. 129, 1913.

Oregon Mother's Pension.—Section 1. Every woman who has one or more children under the age of sixteen years and whose husband is either dead or is an inmate of some Oregon state institution, or by reason of physical or mental diseases is wholly unable to work and whose support and the support of whose child, or children, is dependent wholly or partly upon her labor, shall be entitled to the assistance as provided for in this act for the support of hereself and her child or children; provided, she may have a previous residence of three years in the state, and one year in the county in which application is filed.[77]

Pennsylvania.—An act providing a system of employment and compensation for the inmates of certain penal and correctional institutions and making an appropriation therefor:

Section 11. Hereafter an account shall be kept by the proper officers of the Western Penitentiary, the Eastern Penitentiary and the Pennsylvania Industrial Reformatory at Huntington, and the other correctional institutions hereafter established by the commonwealth, of the labor performed by all prisoners under sentence in such institution. In such account the prisoners shall be credited with wages for the time he is actually engaged in work, the rate of such wage and the amount credited to each to be regulated at the discretion of the Prison Labor Commission or such persons as they may designate. In no case shall the amount be less than ten cents nor over fifty cents for each day of labor actually performed. The difference in the rate of compensation shall be based both upon the pecuniary value of the work performed, and also on the willingness, industry, and good conduct of such prisoner.

Section 12. Three-fourths of the amount credited to each prisoner or the entire amount if the prisoner so wishes, shall constitute a fund for the relief of any person or persons dependent upon such prisoner, and shall be paid, upon the order of the Prison Labor Commission, to the person or persons establishing such dependency to the satisfaction of said board, at such time and times as said board may order.

Section 13. In case a prisoner has no person or persons dependent upon him, the sums so credited shall be invested for the benefit of such prisoner under the rules and regulations of the Prison Labor Commission; and the sum so credited, together with the accrued interest of the same, shall be paid to the said prisoner, one-third on discharge of prisoner, one-third in three months after his discharge and the balance in six months after his discharge.

Section 14. All wages paid under the provisions of this act shall be charged to the manufacturing fund provided for in Section 10 of this act.[78]

Hereafter the inspectors[79] or warden may, if they think it expedi-

[77]General Laws and Joint Resolutions and Memorials, State of Oregon, 1915, pp. 97, 98 and 99.

[78]An Act Providing a System of Employment and Compensation.

[79]Report of the Penal Commission, 1915, p. 34.

ent, furnish to a discharged convict any sum not exceeding ten dollars out of the annual appropriation made by the state for that purpose.[80]

Rhode Island.—When the convict is discharged he is to be decently clothed. The board may in its discretion pay to him a sum not exceeding one-tenth of the average compensation of convict labor during the period of his incarceration. In case he has been unable to work because of sickness or other incapacity, he may, in the discretion of the board, be paid a sum not exceeding one-tenth of the average compensation of convict labor during the time of his sickness. Instead of paying to the convict at discharge the board may pay at any time during the imprisonment of the convict the amount due him to needy friends or relatives. But not less than five dollars is to be paid to the convict at his discharge.[81]

South Dakota.—Such amount of the prisoner's earnings as Board of Charities and Corrections and the warden of the penitentiary may deem best, taking into account the character of the prisoner, his family, the nature of the crime for which he is imprisoned and his general deportment may be placed to his credit. These funds are to be paid to the prisoner's dependent family, or to him at such times and manner as the board and warden may deem best.

The allowance to a life prisoner is to be paid only to dependents of his family. If he has none, a sum not to exceed five cents per day may be allowed to such prisoner himself in the discretion of the board. At least twenty-five per cent of a prisoner's earnings must be kept back and paid to the prisoner at the time of his discharge, either in a lump or in installments as it seems best for the prisoner.

The warden and board may, as a punishment for violations of the rules or other misconduct, withhold such a portion of the earnings as would otherwise be paid to the prisoner personally or to his dependents.

Very similar provisions apply to inmates of the training school at Plankton.[82]

South Dakota Mother's Pension.—For the partial support of women whose husbands are dead or become permanently disabled for work by reason of physical or mental infirmity, or whose husbands are prisoners . . . when such women are poor and are the mothers of children under the age of fourteen years, and such mother and children are legal residents in any county of the state, the county court is hereby authorized and em-

[80]Statutes of the State of Pennsylvania, p. 3495, Vol. III.

[81]General Laws of Rhode Island, Revision of 1909, p. 133.

[82]The Laws Passed at the Eleventh Session of the Legislature of the State of South Dakota, pp. 209-210, 1909.

powered to and shall make an allowance to each of such women, upon petition and notice hereinafter set out, as follows: Not to exceed fifteen dollars a month when such woman has but one child under the age of fourteen years, it shall not exceed fifteen dollars per month for the first child and seven dollars per month for each of the other children under the age of fourteen years . . .[83]

Tennessee.—Upon granting parole to any person the warden furnishes him or her suitable clothing, if not already provided for, not to exceed ten dollars in value, and a sum of money not exceeding ten dollars as the warden may deem proper.[84]

On discharge the convict is paid from one to five dollars, in the discretion of the warden.[85]

Texas.—Every prisoner entitled to a diminution of his term of sentence by good conduct is to receive compensation from the earnings of the state prison to the amount of ten cents per day from the time said prisoner is confined in prison, but when any prisoner forfeits any of his good time, for misconduct, he forfeits out of the compensation allowed twenty-five cents for each day of such good time so forfeited. When a prisoner has a family or relatives within the second degree of consanguinity or affinity dependent upon him the savings are to be paid semi-annually to such of them as the prisoner shall designate. If there are no such relatives the savings are to be paid to him upon his discharge from prison. If he be a life prisoner, such savings may be paid, as directed by him, with the commissioner's approval.[86]

The above section was declared unconstitutional by the attorney general of the State of Texas in 1913 and was amended at a special session of the legislature in 1917. The law now reads as follows:

Every prisoner who shall do extra work or work over time shall be entitled to a credit for the same and diminution of time, as herewith provided, as commutation time for good conduct now provided by law in Article 6217 of the Revised Civil Statutes of 1911; provided, such commutation time may be forfeited in whole or in part by the Prison Commission for misconduct or violation of the rules of the prison system as amended.[87]

Discharge allowance . . . The warden is authorized to furnish the discharged convict with a suit of clothing of good quality and fit, two suits

[83]Laws Passed at the Fourteenth Session of the Legislature of the State of South Dakota, p. 486, 1915.
[84]Supplements to the Shannon Code of the State of Tennessee, p. 878.
[85]Acts of the State of Tennessee, p. 1054, 1905.
[86]McEachin's Annotated Civil Statutes of Texas, p. 2302.
[87]General and Special Laws of Texas, Thirty-fifth Legislature, 1917, p. 51.

of underwear, one pair of shoes and a hat, one shirt, five dollars in money in addition to any money which he may have to his credit with the prison commission and redeemable and non-transferable railroad transportation to the place from which he was sentenced or to such place as he may desire; provided, that the same be no greater distance from the place where he is released than the place from which he was sentenced.[88]

Utah.—Deserving prisoners may receive part of their earnings according to rules adopted by the board. The unmarried prisoners receive not more than ten per cent of their earnings and that at discharge; the married prisoners, not more than twenty-five per cent of their earnings, to be delivered to their families if living within the state and in need. If married prisoners have no resident families they receive the same as the unmarried and that at discharge.[89]

When the convict is discharged the warden furnishes him with clothing, if he is not already provided for, not to exceed ten dollars in value, and such a sum of money as the warden may deem necessary and proper, provided the prisoner has less than ten dollars in earnings to his credit. The board may, in its discretion, furnish the convict with a further sum of money, not exceeding fifteen dollars, whenever in its opinion the necessities of the convict are such as to require the same. Instead of paying the convict the sum allowed the warden may, in his discretion, expend the money, or a portion of it, to pay the car fare of the convict to his home or place of destination.[90]

Vermont.—Any convict who so conducts himself for any month that no charge of misconduct is sustained against him is entitled to a deduction of five days for each such month, and if he is poor and destitute he may receive one dollar for each such month when finally discharged. A reduction of five days and of one dollar for any month is to be made when any charge of misconduct is sustained. But in no case is the amount of the payment on discharge to exceed one hundred dollars.[91]

The superintendent of the house of correction may, in his discretion, and at the expense of the state, furnish a discharged convict with a railroad ticket to his home.[92]

Virginia.—The board may, in its discretion, allow a convict on his

[88]General and Special Laws of Texas, Thirty-fifth Legislature, 1917, p. 51.
[89]The Compiled Laws of the State of Utah, pp. 816 and 820, 1907.
[90]The Compiled Laws of the State of Utah, pp. 816 and 820, 1907.
[91]Statutes of the State of Vermont, pp. 936 and 926, 1895.
[92]Acts and Resolves of the State Legislature of the State of Vermont, p. 164, 1908.

discharge not more than ten dollars. He is provided with a certificate of transportation to his home county and a suit of coarse clothing.[93]

Washington.—The court may direct that the person sentenced to imprisonment in the county jail for family desertion shall be compelled to work upon the public roads or other public works during the term of such sentence. The county commissioners are to allow to the wife or the guardian of the children of such convict at the end of each month a sum not to exceed one dollar and five cents for each day's work done by the prisoner.[94]

Wisconsin.—The discharged convict is provided with a decent suit of clothes and a sum of money not to exceed five dollars in addition to transportation to any place within the state. He may also be allowed employment in the prison for a period of time and at a rate of compensation such as the warden under the direction of the state board may deem proper and equitable.

Any prisoner who, by continual good behavior, diligence in labor or study or otherwise, surpasses the general average of convicts, may be compensated by a money allowance out of his earnings or otherwise at his discharge or while in prison, according to such rules as the board may adopt.[95]

Wyoming.—Every prisoner entitled to a diminution of his time of sentence by good conduct may, in the discretion of the commission, receive compensation from the earnings of the prison in which he is confined. This compensation is to be graded by the commissioners for the prisoners under their care, but in no case is the compensation allowed to exceed ten per cent of the earnings of the penitentiary in which they are confined. The difference in rate of compensation is based on the pecuniary value of the work performed, the willingness, industry and good conduct of the prisoner. Any prisoner who forfeits his good time conduct forfeits out of the compensation allowed not more than fifty cents for each day of good time so forfeited. Life prisoners are entitled to the benefit of this provision when their conduct is such as would entitle other prisoners to a diminution of sentence.

Fines may be imposed in the place of other penalties and punishments and deducted from the compensation standing to the credit of any prisoner. The moneys received from fines are credited to a gen-

[93]Code of Virginia, Vol. 2, p. 2165, 1904.

[94]Session Laws of the State of Washington, p. 72, 1913.

[95]Wisconsin Statutes, pp. 2108 and 2111, 1911. Wisconsin Statutes, p. 2258, 1915.

eral fund, to be disbursed by the direction of the commission as a special aid to discharged and paroled prisoners who are infirm or in any way incapable of earning a sufficient subsistence after their release.[96]

Any person who has been in the penitentiary not less than six months is entitled to a suit of clothes not exceeding fifteen dollars in value and five dollars in money on his discharge.[97]

Wyoming Mother's Pension.—Section 1. Whenever any woman whose husband is dead or has become permanently disabled for work by reason of physical or mental infirmity or is a prisoner . . . and such woman is poor and is the mother of children under the age of fourteen years and such mother and children have been legal residents in any county of the state for one year, the district court or the judge thereof may make an allowance to such woman as follows:

First, not to exceed twenty dollars a month, when she has one child under the age of fourteen years, and if she have more than one child under that age, such allowance shall not exceed twenty dollars for the first child and ten dollars a month for each of the other children under that age. The order making such allowance shall not be effective for longer than six months, but upon the expiration of such period said court may renew this order. The home shall be visited from time to time by a probation officer or other agent appointed by the court; provided, that the person who actually makes such visits shall be thoroughly trained in charitable relief work, and the report or reports of such visiting agents shall be considered by the court in making such order.[98]

The above review of the laws of the states clearly shows the present status of this movement on its legal side. The following is a classification of the states according to their laws:

A few states make no provision for any compensation whatever: Arizona, Arkansas, Delaware, Florida, Georgia, Maryland, Massachusetts, North Carolina, South Carolina.

Some provide only for a discharge allowance: Hawaii, California, Indiana, Louisiana, Montana, Mississippi, New Mexico, Oregon, Tennessee.

Some allow pay for overwork or excess earnings: Alabama, Illinois, Oklahoma, Virginia, Wyoming.

Others have a definite plan for paying a wage: Colorado, Connecticut, Iowa, Kentucky, law declared unconstitutional; Kansas, Maine, Michigan, Minnesota, Missouri, Nebraska, Nevada, New Jersey, New Hampshire, New York, North Dakota, Ohio, Oregon, Pennsylvania,

[96]Session Laws of the State of Wyoming, p. 82, 1911.
[97]Compiled Statutes of the State of Wyoming, p. 205, 1910.
[98]Session Laws of the State of Wyoming, Thirteenth State Legislature, 1915, pp. 25, 26, and 27.

Rhode Island, South Dakota, Texas, law declared unconstitutional and amended later; Utah, Vermont, Washington, West Virginia, Wisconsin, Wyoming.

The following states have made provision for the needy dependents of the husband and father while he is in prison by a mother's pension: Idaho, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, Nevada, Ohio, Oregon, South Dakota, Wyoming. In other states it is probable that in individual instances allowances are granted from the mother's pension fund to the wife and children of convicts. This payment of an allowance is not to be confused, however, with a system of wages for prison labor.

CHAPTER III

Constitutionality of the Laws Providing Compensation for Penal Labor

The constitutionality of the laws providing that prisoners be paid for their labor has been rarely called in question as a principle. This may be due to the fact that it is generally considered as a kind of gratuity on the part of the state, and not that the state is entering into the relation of debtor and creditor with its offenders.

The only reference to the subject contained in the "American Digest of Cases" is given below. In fact, this is the only case that has been appealed to a higher court. It shows that the legislature violated a provision of the constitution. It virtually made a new law by amending a law already in existence. The opinion of the judges reversing the decision of the lower court is interesting because it is the only case of the kind on record.

(*Board of Penitentiary Commissioners* v. *Spencer et al.* Decided May 24, 1914. Appeal from Franklin Court. Opinion of the court by Judge Carroll Reversing. State of Kentucky.) "The appellee, Louis Spencer and several other convicts serving terms of imprisonment in the Kentucky State Reformatory, in behalf of themselves and other convicts, brought suit against the Board of Penitentiary Commissioners, asking a mandamus to compel the Board to set apart and place to their credit as convicts certain sums of money to which they asserted they were entitled under an act passed by the Legislature during the session of 1910. The lower court granted the relief prayed for, and the Board of Penitentiary Commissioners appeal.

"On behalf of the Board several grounds are assigned why the judgment of the lower court should be reversed, but as we have concluded that

the objections to the validity of the act under which the relief was sought and granted is well taken, it will not be necessary to do more than state the reasons that have influenced us in coming to this conclusion.

"Section 51 of the Constitution provides: No law enacted by the General Assembly shall relate to more than one subject, and that shall be expressed in the title, and no law shall be revised, amended, or the provision thereof extended or conferred by reference to its title only, but so much thereof as is revised, amended, extended or conferred shall be reenacted at length.

"The objection to the act of 1910 is found in the failure of the Legislature to conform the act to the mandatory requirements of this section of the Constitution. The title of the act reads: An act to amend an act entitled 'an act to create a Board of Penitentiary Commissioners and regulate the penal institutions of this commonwealth,' which became a law March 5, 1898. The act then reads: Be it enacted by the General Assembly of the Commonwealth of Kentucky; Section 1: That an act entitled 'An act to create a Board of Penitentiary Commissioners and regulate the penal institutions of the commonwealth' be amended by adding after section 1 of said act the following. Then follows a section styled section 1a, providing in substance that the Board of Penitentiary Commissioners are authorized to convert one of the two penitentiaries into a penal institution to be known as the Kentucky Penitentiary in which shall be incarcerated all convicts of a certain class. In the other penitentiary which was to be known as the Kentucky State Reformatory, there was to be incarcerated another class of convicts.

"After providing in another paragraph for the training and education of the convicts, the last paragraph, and the one involved on this appeal, authorized the Board to place to the credit of each prisoner such an amount of the average per capita earnings of the inmates as the Board might deem equitable and just, taking into consideration the character of the prisoner, the nature of the crime for which he was imprisoned and the general deportment; the granting of this authority being followed by directions relating to the manner in which the fund accruing to the credit of the prisoners shall be set apart and distributed.

"Another paragraph authorizes the Board to enter into agreements with the contractors for the prison labor for such modification of existing contracts as will enable the Board to carry out the provisions of the act. Section 2 merely repeals all acts and partial acts in conflict with the act.

"At the threshold of what we have to say it might be well to observe that this court has no disposition to give a narrow or technical construction to the section of the Constitution under consideration, or the construction that will make it difficult or impracticable for the Legislature to phrase or construct titles or acts that will not be obnoxious to this provision of the Constitution. The section should be liberally construed so as not to hinder or embarrass the Legislature in its efforts to enact laws, but at the same time a construction so loose as to virtually nullify the section, which is mandatory in its terms, should not be adopted.

"The Constitution is not a technical instrument and should not be so construed as to defeat the substantial purpose of its adoption as the organic

law of the state. It was intended to operate upon and regulate the practical matters that are continually presenting themselves in governmental affairs, and generally speaking, the language employed is simple in expression and free from ambiguity. But, of course, when any of its sections are attempted to be applied to any one of the multitude of things constantly coming up, there naturally and reasonably come into existence, in company with these attempted applications, differences of opinion as to the meaning of certain provisions, and this unavoidable difference of opinion has given rise to much litigation. But this, in more or less degree, is true of every law that has ever been enacted as well as every contract dealing with private rights that has ever been written.

"The section now under consideration, however, is so sharp and readily understood that it will be not difficult to so construe it as to render it an easy matter for the Legislature to observe its provisions. But notwithstanding this, the number of legislative acts in which its provisions have been disregarded is surprising. Time and again this court has found it necessary to declare legislative acts invalid on account of fatal defects arising under this section, and time and again it has, with painstaking care, endeavored to point out the necessity for a substantial observance of its requirements and fully explain, if needed explanation was necessary, how they might be complied with. So often has this been done that it would seem superfluous to repeat what has been said, especially in view of the fact that under all the opinions of this court this act must be adjudged insufficient.

"It might also not be out of place to observe again that it is not either the duty or the pleasure of the court to interfere with the freedom of the Legislative Department or to attempt to control or restrain its activities, unless it appears that the Legislature is forbidden by or conflicts with or violates some provision of the Constitution. We fully appreciate the fact that the Legislature is at liberty, so far as the Constitution of the state is concerned, to enact such laws under such titles as its judgment dictates, subject to the single limitation that they do not disregard in some material ways the restrictions imposed by the Constitution, the bounds of its authority as marked out by the people in the Constitution. This court, in its judicial capacity, has no authority and no disposition to interfere with the Legislature of the state or to pass judgment on the propriety or wisdom of the laws that it may enact.

"But to the judicial department of the state has been committed the authority to save the Constitution from being ignored or disregarded by individuals and collections of individuals, as well as by other departments of the government, and when it is made plain to the court, that the Constitution has been ignored or disregarded, its duty to interpose its authority is as extensive as the exigencies of the case may require.

"It is also true that this supervising power and large jurisdiction is not conferred by any express grant of the Constitution, but it has become so firmly established as a part of the jurisprudence of the state that no thoughtful person can be found to question it. It has been exercised by this court from the very beginning of the state, always, however, with reluctance and never unless imperatively demanded by a sense of duty

that could not be set aside without disregarding the obligations assumed on taking the office.

(Cases are cited in which these principles have been acted upon, but they have no bearing upon the question in hand and are for that reason omitted.)

"And it is the spirit expressed in these cases and actuated by the conception of its power and duty as therein set forth, that this court has always approached the consideration of cases, which imposed upon it a necessity of setting aside a legislative act.

"The title of this act expressly declares that it is 'An act to amend an act entitled "An act to create a Board of Penitentiary Commissioners and regulate the penal institutions of this commonwealth," which became a law March the 5th, 1898,' and then the act immediately proceeds to amend the act of March 5, 1898, by adding to it a new section styled '1a' leaving the whole of the act of 1898 in effect. The Constitution expressly declares that no law shall be amended by reference to its title only, but that so much thereof as is amended shall be re-enacted and published at length. This mere statement would seem sufficient to demonstrate that the title of this act flagrantly disregards the provisions of the Constitution referred to.

"This proposition is so plain that the only argument advanced in support of the act is that it is not in fact an amendment to the act of 1898 and creates new rights and confers new authority, no reference to which was made in the act of 1898. Therefore, it is said the sufficiency of the act is not to be measured by section 51, but that the title, as well as the act, should be treated as new legislation.

"The conclusive answer to this argument, it seems to us, is that the Legislature did not treat this act as a new act, but saw proper to style it an amendment to the act of 1898.

"If the Legislature had, in a separate act, with an appropriate title, invested the Board of Commissioners with the authority conferred by this act, then the arguments of the consel would be well sustained. But in determining what the Legislature intended to and did do, and for the purpose of ascertaining whether it intended to amend the old law or enact a new one we must of necessity look to the title and the body of the act, and when we do this there is no difficulty in determining what the Legislature intended and did do. It is said in so many words that it intended to and did by this act amend the act of 1898, and to further make plain this intention, it did amend the act of 1898 by a mere reference to the title of that act, without setting forth, as required by section 51, the act that was to be amended, or so much as a single word of it, although all of it was left in force.

"In view of the situation the question is directly presented whether the Legislature can, in the broadest possible way, ignore section 51 of the Constitution and treat its requirements as of no moment. We must either uphold the act and say the Constitution does not mean what it plainly says, or else declare the act invalid. These are the only alternatives presented. If this act should be sustained, it is plain that the Legislature will not only be authorized but invited to amend by its title any act that it thought proper to so amend, and presently we will have the same situation that influenced

that body to incorporate into the present Constitution so much of section 51 as we are now considering.

"To say that this act does not boldly violate section 51 would be to say that the words of the section have no meaning or effect and that a section of the Constitution that in a number of cases has been declared mandatory, has no more force than a Legislative act that each succeeding Legislature may amend or repeal at pleasure. A decision like this will virtually destroy the influence of the Constitution as a controlling guide and place a restraint upon the conduct of the people and their political agents and leave them free from the limitations that it imposes. This is putting the matter in a strong light and yet it is only stating that which a comparison of the act with the section of the Constitution shows to be true. This part of the section has, of course, no application to acts that do not purport to revise, amend, or extend another act or law. When the Legislature comes to enact new law under appropriate titles, its power is not in any manner limited by this provision, and it may act entirely independent of and without reference to it. Of course, many laws that are enacted by the Legislature touch in some way existing laws either by amending, extending, or repealing them, but notwithstanding this, the Legislature, by a new act that does not purport in its title or body to amend, revise or extend an existing law may in fact revise, amend, or extend, free from the control of section 51, and this has often been done.

(Instances cited of amendments which do not violate section 51.)

"With these expressions of views, it follows that the judgment of the lower court must be reversed, with directions to dismiss the petition, and it is so ordered. The whole court sitting."[99]

The opinion of the Attorney-General of the State of Texas as to the unconstitutionality of the Legislative Act providing for the payment of prisoners in that state is summarized below:

The attorney held that the bill violates the provisions of section 3, article 1; section 51, article 3, and section 6 of article 16, of the constitution of Texas, in that it seeks to give convicts a special interest in public property, and in that the same constitutes the making of a grant or appropriation of public money or property to individuals or a class of individuals for private purposes.

The principal part of his opinion is as follows:

"The people of Texas have invested millions of dollars of their joint funds in the acquisition and maintenance of a vast property for the use of their prison system. Every citizen of the state has an equal interest in this property.

"The act of the Legislature under consideration not only gives one citizen or class of citizens excessive rights in this property and so reduces the rights of the remaining citizens therein; it even says that a class of

[99]Reports of civil and criminal cases decided by the Court of Appeals of Kentucky, Vol. 159, Ky. Repts. containing cases decided from 14, 1914 to October 1, 1914, pages 255-270.

men who have become so dangerous to society as to require segregation, and who through their voluntary conduct have forfeited to society the dearest rights of citizenship, and citizenship itself, shall, by virtue of the self-same conduct and the procedure affecting its discovery, be vested with special and exclusive interests in the public property much higher than, and derogatory of, the rights of the citizens themselves therein. The state holds the title to this property for the citizenry; and to the empty right of ownership by citizenship is added the obligation to maintain the property by taxation when necessary; but the usufruct of the property is given to the men who by reason of their war upon society have lost their status and station as citizens.

"The act expressly declares that in ascertaining the proceeds of the prison system over and above the cost of maintenance and operation, the Prison Commission shall not consider nor charge any interest upon the value of the prison system. The proceeds of the prison system, net or gross, are inseparably connected with the productive power of the people's investment in the prison property. The net proceeds of the system's business does not measure the value of the convict's labor. Labor is but one element of production; capital is another; the produce measures the productive value of both combined, and neither separately. To say that the convicts shall receive the net results of this joint application of labor is to say that the convict shall receive as a gratuity a portion of the public property because the investment and its production belong to the state.

"It seems clear to us, and we hold, that the attempt of the Legislature through the bill to give convicts a usufructary interest in public property is unconstitutional and void because in contravention of the letter and spirit of Section 3 of our Bill of Rights, wherein it is declared:

" 'All freemen, when they form a social compact, have equal rights, and no man, or set of men, is entitled to exclusive separate public emoluments, or privileges, but in consideration of public services.'

"Returning to the question of the power of the Legislature to compensate a convict by distributing to him out of the net proceeds of the prison system an amount of money equal to the value of his labor, as provided in the bill, we hold that this cannot be done.

"Section 51 of Article 3 of the Constitution of Texas provides:

" 'The Legislature shall have no power to make any grant or authorize the making of any grant of public money to any individual, association of individuals, municipal or other corporation whatsoever . . .'

"Section 6 of Article 16 of the Constitution of Texas provides:

" 'No appropriation for private or individual purposes shall be made. A regular statement, under oath, and an account of the receipts and expenditures of all public money shall be published annually, in such manner as shall be prescribed by law.'

"In their bearing upon the questions here involved, we regard the foregoing constitutional provisions as meaning, in the substance, the same thing. If the profits or revenue arising to the state by reason of the operation of the prison system is 'public money,' then clearly the bill makes a grant or authorizes the making of a grant of 'public money' to an individual or association of individuals in contravention of Sec. 51 of

Art. 3; likewise it makes an 'appropriation for private or individual purposes' contrary to the provisions of Sec. 6, Art. 16. Principle and authority unite to force the conclusion that this revenue is 'public money.'

"Involuntary servitude as a punishment for crime whereof the party shall have been duly convicted is authorized by the Constitution of the United States—Art. 3, paragraph 1—and by the Constitution of Texas—Harris' Constitution—page 114. Under the authority of the Constitutions, the legislature of this state at an early day enacted what is now Article 72 of the Penal Code, which reads as follows:

" 'Whenever the penalty prescribed for an offense is imprisonment for a term of years in the penitentiary, imprisonment at hard labor is intended.'

"This provision of law has never been repealed and is in force now. The state thus acquires an ownership in the services of all persons convicted of crime and duly sentenced therefor, which guarded by certain humanitarian principles, is treated and protected as valuable property—cases cited.

"In the case last cited, it is said:

" 'The first object of punishment is the protection of society; the reformation of prisoners is only subsidiary and incidental to this. Their conviction has subjected them to a constitutional, involuntary servitude; *and their labor and the proceeds of it belong to the state.*'

"The express declaration of our own Constitution supports the reasoning of the cases cited above.

"Section 3 of Article 16 provides:

" 'The Legislature shall make provision whereby persons convicted of misdemeanors and committed to the county jails in default of payment of fines and cost, shall be required to discharge such fines and costs by manual labor, under such regulations as may be prescribed by law.'

"There can be no doubt, therefore, that the labor of those convicted of misdemeanors is public property. If the labor of a misdemeanor convict is public property, how can it be said that the labor of the felon is not of the same character?

"Section 24 of Article 16 declares that:

" 'The Legislature shall make provision for laying out and working public roads, for the building of bridges, and for utilizing fines, forfeitures, and convict labor to all these purposes.'

"This provision of the Constitution makes no distinction between the labor of convicts of the different grades and, since it commands the Legislature to provide for the utilization of fines, forfeitures and *any or all convict* labor in the construction of public works, it clearly and directly recognizes the labor and its proceeds as belonging to the public. Again, this and other constitutional provisions gives the Legislature the same power over the disposition of *fines* and *forfeitures* as over the disposition of convict *labor,* and that *fines* belong to the public is not even an open question. Speaking of *fines,* Justice Stayton of the Supreme Court, in the case of *N. & T. C. Ry. Co.* v. *Harry & Bros.,* 63 Tex. 261, said:

" 'Section 24, Article 16, of the Constitution evidently refers only to such fines and forfeitures as under the law may inure to the public; such as fines imposed as punishment for crime . . .'

"And in the case *Ex Parte Smythe,* 120 S. W. 201, the Court of Criminal Appeals said:

" 'It clearly follows that, when the fine is imposed, said fine becomes the money of the State of Texas.'

"In the case of *Williams* v. *Middlesex County,* 4 Metc. 78, the Supreme Judicial Court of Massachusetts said:

" '. . . We think that this provision for payment to the convict was intended to be in the nature of a gratuity, to be paid for *services which he was required to perform in execution of his* sentence, independent of any such allowance in money.'

"Speaking of the pardoning power of the Governor, the Court of Criminal Appeals in the case of *Ex Parte Mann,* 46 S. W. 829, said:

" 'His pardoning power or his power to remit fines, forfeitures, and penalties, can go no further than the *public may be interested.*'

"The public is interested in all punishment for crime by fine or by imprisonment at hard labor; it is interested not only in the *confinement* of the prisoner, but in his *labor* as well.

"Convict labor being public property, that its proceeds cannot be given away by the Legislature seems apparent from the express provisions of Section 51, Article 3; Section 6 of Article 16, and Section 3 of Article 1 of the Constitution.

"But the vice of the bill under consideration, from a legal standpoint, strikes deeper than the mere attempt to reward the convict himself for good behavior; it goes further and attempts in a measure to compensate the members of his family for the deprivation of the convict's services. We might grant that the convict himself in working out his sentence performs a public service; we might go further and grant that the convict himself can be compensated for his own labor performed in the execution of his sentence; and yet with these admissions, the bill would be clearly unconstitutional because it goes further than seeking to compensate the convict himself for his own services, and provides a gratuitous donation to individuals other than convicts. That this cannot be done is conclusively established by the decisions of the Court of Criminal Appeals of this state.

"There is still another respect in which the effect of the act of the Legislature under consideration amounts to the granting away of public property and public funds for private use. By virtue of the terms of Chapter 74 of the acts of the 30th Legislature, and by virture of the terms of Chapter 24 of the acts of the 31st Legislature 'all of the net revenues and income which may be derived or received' by the Board of Prison Commissioners 'from year to year from any and all sources whatsoever, and remaining after the payment of the current expenses and necessary improvement of every character which may be incurred by said Board or under its direction, pursuant to law, in such current year are pledged to the payment of twenty bonds, each for the principal sum of $10,000.00, bearing interest at the rate of 5 per cent per annum, and known as the Penitentiary Railroad Bonds. These bonds and interest coupons belong to the permanent school fund of the state. As a matter of course, the permanent school fund, together with all securities held by it, is public property, and if the pledge of the net revenues of the

prison system is a valid security for the payment of the railroad bonds, then there can be no question but that any act of the Legislature which directly or indirectly destroys this particular security, destroys public property.

"The act of the Legislature under consideration diverts the net revenues of the system from the payment of these bonds and interest to a gratuituous distribution amongst the convicts and their relatives, and as stated before, if the bonds were held by private individuals, there can be no doubt but that this would be an unconstitutional diversion. It is unnecessary in this connection to decide whether or not the permanent school fund and the custodians thereof would stand in the same position that the private holders of such bonds would occupy. It is sufficient for the condemnation of this act to say that by such a diversion of the net revenues the public's interest in the permanent school fund is impaired, and to that extent a portion of public property and of public funds are sought to be donated as a gratuity to particular individuals, or a class of individuals for private purposes, and not in consideration of public services.

"It will be noted in this connection that the act is *ex post facto* in effect as applied to those convicts who are now serving their terms in the penitentiary, and if we should be in error upon the proposition that the appropriation is not made in consideration of public services as to those who may in the future become convicts, still it certainly is true that those who have already been convicted of crime and are now serving the execution of their sentences, will not and cannot, perform public services in return for the compensation. Their status has been fixed by pre-existing law; by pre-existing law they have been condemned to serve terms in the penitentiary, and to perform hard labor throughout such terms. An act of the Legislature of the kind under consideration passed after their commitment, if valid, would work an amendment of the judgment of a court rendered in due course, and establishing their rights and obligations. It is not possible, therefore, that those who have heretofore been convicted could return a public service in consideration of the appropriation, but on the other hand, the statute, if effective, would work a commutation or a lightening of their sentences.

"We hold, therefore, that the act of the 33rd Legislature under consideration, is unconstitutional and void, in that it violates Section 3 of the Bill of Rights by giving persons convicted of crime and sentenced to the penitentiary, a special and exclusive right and privilege in public property not in consideration of public services.

"And that said act, together with that portion of the existing prison law, which seeks to authorize the payment of per diem compensation to convicts for good behavior are unconstitutional and void as being in contravention of Section 51 of Article 3, and Section 6 of Article 16 of the Constitution, because said enactments seek to make an appropriation or grant of public funds to an individual or association of individuals for private purposes.

"The state has a legal right to imprison a person convicted of crime and to take the products of his labor.

"There are two elements in each judgment or decree of the court

consigning a committed person to the penitentiary which operates in favor of the state and adversely to the defendant. They are:

(a) The state secures the right to imprison the felon for the period of time found by the jury.

(b) The state secures the right to place the convict at hard labor for the period of time named in the jury's verdict and to retain the proceeds of that labor.

"To be briefer still, the state under the judgment obtains the right to make the convict:

(a) A prisoner; and,
(b) A slave.

"The convict, by the judgment and decree of the court, loses:

(a) His freedom; and, (b) the proceeds of his labor.

"Such is the legal effect of the judgments and decrees by which the state holds the four thousand convicts in her penitentiaries at this time. This character of right so obtained by the state is one which has come down to us along with the other principles of our government from time immemorial.

"These rights of the state are vested rights under the Constitution, and may only be interfered with, ameliorated or lessened by an exercise of the pardoning power, which resides alone in the Governor and may not be interfered with in any manner by the legislative department of the government.

"The present bill would fix the rights of the state as follows:

(a) To imprison the convict (b) at hard labor, (c) the proceeds of which labor shall not be the property of the state, but shall be the property of the convict or his relatives.

"The result of the enactment of this law then would be, as to the four thousand convicts already in prison, to amend the judgments sentencing each of said convicts to prison and to destroy the rights of the state to the extent of bestowing upon the convict or upon his relatives all the proceeds of his labor exclusive of his cost and maintenance, and of taking such proceeds from the state. If it be said that the bestowal of the proceeds of the labor of the convict upon himself or upon his relatives is an amelioration of the punishment, then the act of the Legislature has the effect of bestowing upon each convict now in prison a pardon and commutation of sentence to the extent specified. In other words the present act, in so far as the convicts already in the penitentiary are concerned, is an invasion upon the pardoning power of the Governor and an encroachment upon the executive authority, because it changes, modifies and ameliorates the punishment prescribed by the judgment of the court, and undertakes to substitute a new and different punishment therefor for the crime to that provided by the existing law at the time the convict received his sentence. It is a clear legislative encroachment upon the executive authority of the Governor to issue pardons and grant commutations of sen-

tence, and as such, under the authorities we have heretofore cited, is, as to all convicts in prison, unconstitutional and void. In any event, House Bill No. 18 proposes a change in the punishment prescribed by law at the time each of the convicts now incarcerated in the prison was convicted, and as such, is, as to each of the convicts, retroactive and in violation of the Constitution of the state.

"Upon examining House Bill No. 18 it will be found that the provisions there made for disposing of the funds of the prison system are entirely inconsistent with the provisions of Section 2 of Chapter 57 providing for the payment of interest and creating a sinking fund out of the proceeds of the prison system, and therefore under the plainest and most familiar rule of construction House Bill 18 would be held to repeal said Section 2 of Chapter 57."[100]

CHAPTER IV

The Present Legal Situation in Illinois and Its Bearing Upon the Problem of Paying Prisoners in That State

The conditions under which a public institution or system of institutions is operated are determined largely by the laws of a commonwealth. It is conceivable that a penal institution or system of institutions might pay a wage to its inmates while operating under almost any statute not strictly forbidding such payment. But even though a statute does not forbid the payment of a wage to prisoners, it may make difficult or impossible the operation of such a plan by what it authorizes.

The statutes of Illinois, by permitting the letting of a per cent of its convict labor to contractors, by authorizing the production of crushed stone free to road-building authorities, and by limiting the amount that may be devoted to the compensation of prisoners for their labor to ten per cent of the earnings of the penal institutions, militate against the inauguration of a well-established system of wage-payment to its prisoners.

A review of the law and its bearing upon the institutions affected is given below:

77. "It shall be the duty of the Board of Prison Industries of Illinois to see that . . . 'under no circumstances shall any of the products of the labor of said convicts or prisoners mentioned in this act, be sold upon the open markets, except as hereinafter provided: That the said products do not enter into conflict with any of the established industries of the state, except as hereinafter provided.'

78. "Three classes or grades of prisoners: 'In the first class shall be included those appearing to be corrigible or less vicious than the others

[100]Opinion passed upon and approved by the department of the Attorney General, August 22, 1913.

and likely to observe the laws and to maintain themselves by honest industry after discharge. In the second grade shall be included those appearing to be incorrigible or more vicious, but so competent to work and so reasonably obedient to prison discipline as not seriously to interfere with the productiveness of their labor or the labor of those in company with whom they may be employed; in the third grade shall be included those appearing to be incorrigible or so incompetent otherwise than from temporary ill health as to seriously interfere with the discipline or the productiveness of the labor of the prison or reformatory.'

79. "Convict labor is not to be contracted to any person, firm, association, or corporation 'except that the said prisoners or convicts in said penal or reformatory institutions may work for, and the products of their labor may be disposed of to the state, or for or to any public institution owned or managed and controlled by the state.'

80*6: "The wardens, superintendents, managers and officials of all reformatories and penitentiaries in the state shall, so far as practicable, cause all the prisoners in said institution, who are physically capable thereof, to be employed at useful labor, not to exceed eight hours of each day, other than Sundays and public holidays, but such useful labor shall be either for the purpose of the production of supplies for said institutions, or for the state, or for any public institutions owned or managed and controlled by the state, or for the purpose of industrial training and instruction, or for the making of crushed rock for road material or for the improvement of public grounds owned by the state, or used in and upon public buildings owned by the state, or for agricultural pursuits for the support of the state institutions, or partly for one and partly for the other of such purposes, or a combination of all said industries and employments; provided, however, that it shall be the policy of the state to use in such industries no more machinery or motive power, other than hand and foot power, than may be required to successfully carry this act into effect; and provided, that the Board of Managers of said Illinois State Reformatory at Pontiac, may use all or any part of the eight hours provided herein for labor of the convicts, in giving useful instruction to the inmates of said reformatory.

81*7. "The labor of the prisoners of the first grade in each of the said penitentiaries and reformatories shall be directed with reference to fitting the prisoners to maintain themselves by honest industry after their discharge from imprisonment, as a primary or sole object of such labor, and such prisoners of the first grade may be so employed at hard labor for industrial training and instruction, even though no useful or saleable products result from their labor, but only in case such industrial training or instruction can be more effectually given in such manner. Otherwise, and so far as consistent with the primary object of the labor of prisoners of this first grade as aforesaid, the labor of such prisoners shall be so directed as to produce the greatest amount of useful products, articles and supplies needed and used in the said institutions and in the buildings and offices of the state or in any public institution owned or managed and controlled by the state or said labor may be for the state.

82*8. "The labor of the second class shall be directed primarily to the labor for the state or to the production or manufacture of useful articles and supplies for said institution as above.

83*9. "The labor of prisoners of the third grade in said penitentiaries and reformatories shall be directed to such exercise as shall tend to the preservation of health, or this shall be employed in labor for the state, or in the manufacture of such articles, supplies as are needed and used in the said institutions, and in the public institutions owned or managed and controlled by the state.

84*10. "All convicts sentenced to state penitentiaries and reformatories in this state shall be employed for the state or in productive industries for the benefit of the state or for the use of public institutions owned and managed and controlled by the state, which shall be under rules and regulations for the distribution and diversification thereof, to be established by the Board of Prison Industries.

85*11. "The labor of convicts in penitentiaries and reformatories in this state, after the necessary labor for the manufacturing of all needed supplies for said institution shall be primarily devoted to the state and the public institutions and the building thereof, and the manufacture of supplies for the state and public institutions thereof; But, provided, that if the demands of the state, the state institutions, and the school and road districts thereof, as herein provided, shall not be sufficient to furnish employment to all the prisoners of the penal and reformatory institutions of the state, then the Board of Prison Industries may and are hereby authorized to dispose of the surplus products of such labor to the best advantage of the state; but, provided further, that no more than 40 per cent of said prisoners in the penal and reformatory institutions shall be employed in the manufacture of products of industries heretofore established, which may be disposed of other than to the state, state institutions and school and road districts of the state; and, provided further, that the said Board of Prison Industries under the direction of the Governor is hereby authorized to employ not more than 40 per cent of said prisoners in the penal and reformatory institutions for the improvement of the channels of the Okaw, Coche, Little Wabash, Big Muddy, Saline, and Sangamon Rivers.

86*12. "Crushed rock or other manufactured road material created by the labor of such convicts or prisoners shall be furnished *free* at such penitentiary or reformatory institution, upon the requisition of the State Highway Commission, but upon the express agreement that such material shall be placed in a permanent public highway.

88*14. The Board of Prisoners in Illinois and the superintendents of reformatories and wardens of penitentiaries respectively are authorized and directed to cause to be manufactured by the convicts in the penitentiaries and reformatories such articles as are needed and used therein, and also such as are required by the state, and in the buildings, offices and public institutions owned or managed and controlled by the state, including materials to be used in the erection of the buildings. All such other articles manufactured in the penitentiaries and reformatories and not required for use therein may be furnished to the state or for or to any public institution owned or managed and controlled by the state at and for such prices as

shall be fixed and determined as hereafter provided upon the requisition of the proper official, trustee or manager thereof. No article so manufactured shall be purchased from any other source for the state or public institutions of the state unless said Board of Prison Industries of Illinois shall have certified that the same cannot be furnished upon such requisition, and no claim therefore shall be audited or paid without such certificates.

91*17. "Every prisoner confined in any penitentiary or reformatory in this state who shall become entitled to a diminution of his term of sentence by good conduct, may, in the discretion of the warden of the penitentiary or of the superintendent of the reformatory receive compensation from the earnings of the penitentiary or reformatory in which he was confined, such compensation to be graded by the warden of the penitentiary and the superintendent of the reformatory for the prisoners herein, for the time such prisoners may work, but in no case shall the compensation allowed to such prisoners exceed in amount 10 per cent of the earnings of the penitentiary or reformatory in which they are confined. The difference in the rate of compensation shall be based both upon the pecuniary value of the work performed and also on the willingness, industry and good conduct of such prisoner: Provided, that whenever any prisoner shall forfeit his good time for misconduct or the violation of the rules and regulations of the penitentiary or reformatory, he shall forfeit out of the compensation allowed under this section, fifty cents for each day of good time so forfeited: And provided, that prisoners serving life sentences shall be entitled to the benefit of this section when their conduct is such as would entitle them otherwise to a diminution of sentence, subject to forfeiture of good time for misconduct as herein provided.

92. "Surplus to credit of prisoner.—The amount of surplus standing on the books of the penitentiary or reformatory to the credit of any prisoner, may be drawn by the convict during his imprisonment only upon the certified approval of the Board of Prison Industries of Illinois for disbursements by the warden of said penitentiary or superintendent of said reformatory to aid the family of such prisoner, or for books, instruments and instruction not supplied by the penitentiary or reformatory to the men of his grade, or may, with the approval of the said warden or superintendent, be so disbursed without consent of such prisoner, but no portion thereof shall be disbursed for indulgences of food, clothing or ornament beyond the common conditions of the others in his class in the prison at that time. Any balance to the credit of any prisoner at the time of his conditional release as provided by law, shall be subject to the draft of the prisoner in such sums and at such times as the Board of Prison Industry of Illinois shall approve. At the date of absolute discharge of any prisoner the whole amount of credit balance as aforesaid shall be subject to his draft at his pleasure: Provided, that any prisoner violating his conditional release, when the violation is formally declared, shall forfeit any credit balance, and provided further, that any prisoner may bequeath by will any sum that may be due him at the time of his death."[101]

Three points in these laws should be observed: 1. That if the

[101]The Revised Statutes of Illinois, 1917, pages 2217-2220.

demands of the state, the state institutions, and the school and road districts thereof, as herein provided, shall not be sufficient to furnish employment to all the prisoners of the penal and reformatory institutions of the state, then the board of prison industries may and are hereby authorized to dispose of the surplus products of such labor to the best advantage of the state. But, provided further, that no more than 40 per cent of said prisoners in the penal and reformatory institutions shall be employed in the manufacture of products of industries heretofore established, which may be disposed of other than to the state, state institutions, and school and road districts of the state.

2. That crushed rock or other manufactured road material created by the labor of such convicts or prisoners shall be furnished *free* at such penitentiary or reformatory institution, upon the requisition of the state highway commission, but upon the express agreement that such material shall be placed in a permanent public highway.

3. That in no case shall the compensation allowed to such prisoners exceed in amount 10 per cent of the earnings of the penitentiary or reformatory in which they are confined.

The meaning of these clauses of the law becomes clearer in their bearing upon the problem of paying a wage to prisoners when they are read alongside of the recent reports of the Illinois state penitentiaries.

Take for example, the report of the Southern Illinois Penitentiary[102] at Chester for the two years ending September 30, 1912.

The cost per prisoner per day for these two years was 53.98 cents. The total population is given as 1,188.

The total population working in the open market	141
The total population working for state institutions	643
The total population working in state service	364

Under state institutions are given clothing manufacture, 111; knitting factory, 14; brush and mop factory, 5; quarry, 513.

Under the title "open market" are included the following industries with the distribution of inmates: Knitting factory, 46; brickyard, 65; quarry, 30.

Under the heading "Prison Duties" are included the numerous divisions of the institution: Machinery, 79; farm and garden, 32; slaughter-house and cow barn, 3; stable, 20; gates, 12; officers' kitchen and dining hall, 16; convict kitchen and dining hall, 41; cell house, 32; tobacco shop, 2; ice plant and cold storage, 2; hospital and dispensary, 7; library, 2; clothing convict, 16; warden house, 24; sick in hospital,

[102]Report of the Southern Illinois Penitentiary at Chester for the two years ending September 30, 1912, page 35.

12; sick in cell, 1; incapable for duty, 18; confined in solitary, 6; idle in cell, 3; yard and runners, 20; laundry, 18; lawns, 7; barber line, 4; new greenhouse, 12; new stone wall, 13; tile factory, 2.

It is evident from this data that the labor of 141 men during the year ending September 30, 1912, worked for contractors. This represents about 14 per cent of the total population, about 18 per cent of the total productive labor of the institution. As a rule, contractors get the choice labor of penal institutions. Prison reports do not show the quality of the labor let to the contractors, but no doubt the labor so let in Illinois penitentiaries is no exception to the rule.

The producing of free road material takes a large amount of the productive labor of the inmates in the Southern Illinois penitentiary. For the year ending September 30, 1912, a total of 513 men were employed in the quarry producing this free road material; these men worked 156,238 days out of the total (182,378) days worked by all the inmates in the prison industries for state institutions, or more than 80 per cent of the days worked in the prison industries were spent in producing free road material.

The following statement made by the Board of Prison Commissioners at Chester is illuminating in connection with the above facts:

"In deference to the view held by the State Board of Administration and others, that our goods should be furnished to the state, and others, at practically cost, our products have been sold at a very close margin. Our profits, for that reason, have been small."[103]

The recent report of the Illinois penitentiary at Joliet gives the following facts with reference to the distribution of labor by days in that institution:

PRODUCTIVE LABOR

Departments	Days	Total Days	Earned*
Furniture industry	69,705		
Shoe industry	16,149		
Broom industry	21,858		
Stone industry	60,508		
Foundry industry	2,156		
Rattan industry	77,866		
Rock pile	8,122		
		256,364	.....

[103]Report of the Southern Illinois Penitentiary at Chester for the two years ending September 30, 1912, page 6.

*Industrial report.

NON-PRODUCTIVE LABOR

State shops	35,441		
Store and old farm	11,640		
Stables and teaming	5,448		
Washroom, laundry and solitary	18,802		
Convict kitchen	20,206		
Cell houses	20,539		
Warden house, office and library	26,875		
Yard	31,170		
Hospital	2,880		
Women's prison	17,306		
Band room and prison post	2,802		
Camp Dunne	5,505		
Camp Allen	4,975		
Honor farm	11,559		
		215,148	.....

IDLE, SUNDAYS, ETC.

Sick	4,460		
In cell, idle	3,306		
		7,766	.....
Sundays	79,635		
Holidays	10,772		
		90,407	.....
		569,685	

The data given by prison reports is often impossible of interpretation. In a measure, that is the case with the data given in the report of the Joliet prison. But the statement made by the commissioners themselves justifies one in one's belief that the conditions in this institution are in general no different from those in the Chester penitentiary with reference to the employment of its labor. The commissioners make no statement with reference to the letting of labor to contractors, but their view of the crushed stone industry is clear:

"The crushed stone industry, under the existing law, is not productive of revenue. Crushed stone is given freely to township road authorities who will pay the freight on it and use it in making hard public roads under the direction of the State Highway Commission. With the heavy expense for maintenance of equipment, furnishing of power and the cost of maintaining 225 inmates, not one dollar comes to the institution for the stone furnished. On the contrary, the expense mentioned is met from the profits of other industrial departments of the institution. There was also charged up against the profits of the industrial department $15,210.63 for maintenance of road camps and farm. In the two years covered by this report there was used on the public highways of the State of Illinois 228,714 cubic yards of crushed stone furnished by our quarry, as against

212,168 cubic yards for the previous two years, or an increase in shipments of 16,546 cubic yards. With the industries bearing this added expense of the quarry, camps and farm, it is gratifying to know that we will be in a position during the next two years[104] to furnish double this amount of crushed rock by reason of having installed a new crusher outfit which will be in operation in March, 1915."

It is evident from these facts that no adequate system of paying prisoners is possible from the point of view of the Illinois institutions while the law remains as it is.

It is reported that employees in the reed and rattan department where furniture is made in the Joliet penitentiary (obviously contract labor industry) are given a share in the earnings.[105]

Each employee in this department earned $5.69 in March, 1914.

Prisoners in this work learn a trade which can be followed upon obtaining their freedom. In March, 1914, with 259 workingmen, 6,595 pieces were made, as against 5,153 in March, 1913, with 288 employees. In April, 1914, each man earned $6.32.

This is evidently a bonus system for getting a maximum of work out of the men employed in the industry. It is not a system for paying a wage to the prisoners.

If the law of Illinois were changed so that none of the labor of the penal institutions is permitted to be let to contractors under any form, and so that a reasonable market price is credited to the Illinois penitentiaries and reformatories for their products, they could earn a small profit at least and pay a wage of some sort to their inmates who are able to work. This is being done in Ohio. There the inmates are allowed from one to three cents per hour. Up to November, 1915, $75,000 had been paid to prisoners, $20,000 of which was turned over to the dependent families.

CHAPTER V

Proposed Plan for Paying Wage to Inmates at House of Correction, City of Chicago

The historical and legal aspects of the subject have been reviewed. The practical phases of the problem of putting in operation a plan for paying a wage to prisoners are now to be considered.

A concrete example for our observation is found in the House of Correction, City of Chicago.

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[104]Report of the Commissioners of the Illinois State Penitentiary at Joliet for the two years ending September 30, 1914, page 6.

[105]The Delinquent Vol. IV, No. 5, June, 1914; pages 19 and 20.

The steps already taken in the development of such a plan in this institution are as follows: Up to the year 1914 the labor of the inmates not used in the department industries was let to contractors. But after an investigation made at the request of the Committee of Finance, December 11, 1913, to March 24, 1914, which showed that the city was losing money on the labor let to contractors, and that these were making large profits from that labor,[106] it was decided to abolish the contract system. This was done early in the year 1914.

The City Council made a loan of $10,000.00 to the House of Correction with which to open up new industries for the employment of the labor that would be rendered idle by the abolition of the contract system. The new industries thus promoted to take the place of the contract industries are operated under what is known as a capital account plan.

The House of Correction furnishes the labor of the inmates, provides foremen and housing for the industries, purchases machinery and materials, directs the entire process of production, and disposes of the products of the capital account, as well as of the department industries. A separate record of the operation of the capital account industries is kept. The House of Correction collects from the capital account at the rate of fifty cents per day for the labor of each prisoner engaged in the capital account industries. This a little more than covered the per capita cost of maintenance for the days the men were employed in these industries. The report of the House of Correction for 1915 gives the cost of maintenance as thirty-eight cents per day per inmate for that year.

During the year 1914 four industries were opened up under this account: (1) A bakery, which furnishes bread to the police department, city hospitals, and municipal lodging houses; (2) a sheet metal works, which manufactures galvanized dirt boxes and boulevard scrapers; (3) a printing establishment, which prints forms for the city departments; (4) a broom and brush factory, which makes brooms and brushes for use in cleaning the city streets.

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[106]During the year ending September 30, 1913, the three important contract companies profited to the extent of approximately $32,500.00 in the difference in value between labor in the competitive open market and contract labor. In addition the House of Correction suffered further loss during the same period by reason of letting out labor under contract without charging for space, light, heat, or power amounting to $12,500.00. This makes a total difference approximately $45,000.00 a year, which the contract shops profited by reason of these contracts with the House of Correction. This is the estimate made by the Committee.

Report on the Investigation of Prison Labor and Management, House of Correction. Page 18.

In 1915 three additional industries were opened up: (1) A garment factory for the manufacture of bathing suits for municipal beaches; (2) a greenhouse for the propagation of plants and flowers for the City Hall and municipal grounds; (3) a junk yard for the conservation of all old and unused materials obtainable from the various city departments.

The total profits from the operations of the capital account industries for the year 1914 and 1915 are approximately $10,000.00.

The proposed plan for paying a wage to prisoners is based upon the earnings of the labor used in these industries. The results of the business are shown by the balance sheet and cash account and by the following table:

CAPITAL ACCOUNT INDUSTRIES, HOUSE OF CORRECTION, CITY OF CHICAGO, COVERING PERIOD 1914 AND 1915

BALANCE SHEET, 1914

	Assets	Liabilities
Cash	$16,562.02	
Bills receivable	30.04	
Inventory of stock and material	13,173.27	
Inventory of Equipment	344.20	
Due to House of Correction for labor		$10,746.00
Bills payable to City Council		10,000.00
Net profits		9,363.53
	$30,109.53	$30,109.53

BALANCE SHEET, 1915

Cash		$25,713.35	
Bills receivable		24.66	
Inventory of stock and material		17,167.94	
Inventory of equipment		4,973.40	
Due to House of Correction for labor, 1914			$10,746.00
Due to House of Correction for labor, 1915			15,504.50
Due for materials purchased			1,604.69
Bills payable to City Council			10,000.00
Net gain—			
1914	$9,363.53		
1915	660.57		
			10,024.10
		$47,879.35	$47,879.29

CASH ACCOUNT, 1914

Receipts—	
Total receipts for the year	$45,683.44
On hand first of the year	10,000.00
Total receipts for the year	$55,683.44
Disbursements—	
Total disbursements for the year	$39,121.42
On hand at end of year	16,562.02
Total	$55,683.44

CASH ACCOUNT, 1915

Receipts—	
Total receipts for the year	$80,290.18
On hand first of the year	16,562.02
Total	$96,852.20
Total receipts for the year	$80,290.18
Total previously reported	55,683.44
Total receipts to date	$135,973.62
Disbursements—	
Total disbursements for the year	$71,138.85
On hand at end of the year	25,713.35
Total	$96,852.20
Total for the year	$71,138.85
Total previously reported	39,121.42
Total disbursements to date	$110,250.27

TABLE I

TABLE SHOWING LOSS OR GAIN IN CAPITAL ACCOUNT INDUSTRIES, HOUSE OF CORRECTION, CITY OF CHICAGO, 1914 AND 1915

	Industries	Losses	Gains	Men Days	Loss or Gain (per man day)	
1.	Bakery	$ 482.56	.....	3,622	.13	..
2.	Sheet Metal Works	.....	$ 462.89	13,304	..	.035
3.	Printing	.....	9,626.25	13,980	..	.070
4.	Broom and Brush	4,240.11	.....	13,795	.31	..
5.	Garments	.....	3,483.80	6,251	..	.557
6.	Greenhouse	.....	180.89	....	..	..
7.	Junk Yard	.....	993.00	1,549	..	.641
	Total	$4,722.67	$14,746.83	52,501	.08	.27
	Net gain		$10,024.16			.19

The following is a statement of the business of the capital account industries for the five years ending December 31, 1918. No attempt was made to have this statement checked up by an accountant. It is given as it appears in the sixty-second annual report of the comptroller of the City of Chicago, 1918:

Earnings to December 31, 1918	$706,365.24
Expenditures to December 31, 1918 (including $16,650.73 paid to pension fund)	610,669.21
Excess of earnings	$ 92,686.03
Interest on deposits to December 31, 1914	$84.08
Available cash balance, December 31, 1918	$102,770.11
Inventory of material and equipment, December 31, 1918	26,643.29
Total value, December 31, 1918	$129,413.40

The number of men days worked by the inmates in producing the capital account products gives rise to an important item of expense since the House of Correction collects from that account at the rate of 50 cents per day for this labor. In order to ascertain the correctness of the data given with reference to the men days, a careful compilation of the days served by the men of the entire institution was made from the reports of the foremen of the various departments for the year ending May 31, 1916. (It was impossible to make the compilation for the entire year, 1915, as a fire had destroyed the reports of the first five months.)

The reports of the foremen show that in some instances the department and the capital account industries are under the same foreman and are for that reason not reported separately. The bakery and garments industries, for example, provide both for needs of the institution and for the market supplied by the capital account industries. In such cases it was impossible to test the validity of the data. (This is not saying that the figures are incorrect, but from the reports in existence at the time the study was made it was impossible to tell the number of men days spent in producing for the sheet metal works, the bakery, the garments, the junk yard, and the greenhouse industries.)

But the printing and the broom and brush industries were reported by themselves. It is possible to compare the figures from which the liabilities for labor in the loss and gain statement of these two industries were computed with those taken from the reports of the foremen. Table No. II shows the comparison.

TABLE II

Table showing comparison between number of men days reported by foremen of indicated industries for year ending May 31, 1916, and those given in the original data for 1915:

	Foreman's Report	Original Data
Broom and brush	7,837	8,003
Printing	8,425	7,466

We can also compare the monthly averages of the men spent in these two industries, computing the averages as follows:

	Broom and Brush	Printing
Men days monthly average for twelve months of 1915 on basis of original data	650	622
Men days monthly average for last seven months of 1915, data from report of foreman	660	725
Men days monthly average for twelve months, June 1 to May 31, 1916, report of foreman	667	702

The small discrepancies are to be accounted for on the grounds that the periods are not exactly the same in any two cases. This at least satisfies the demands for the broom and brush industry. The differences in the averages of the printing industry are much greater, but here it is observable that the average for the last seven months of 1915 is larger by 23 than for the year ending May 31, 1916. These seven months may have been the period when this industry employed the bulk of the men for 1915. The other months may have had much smaller numbers and so brought the average down to 622. This is a speculation, but the average would incline one to accept the numbers given in the original data as valid.

The source of the original data was the report compiled for the warden from the reports of the foremen for the year 1915. The materials for testing the validity of the original data were compiled direct from the reports of the foremen, but for the year ending May 31, 1916.

There is no going back of the records of the House of Correction to test the validity of the other items of expense involved in the operations of the capital account industries. These items are reported in detail month by month in the original data. The following statement of loss and gain for the capital account industries shows the financial basis of the business:

LOSS AND GAIN STATEMENT OF EACH CAPITAL ACCOUNT INDUSTRY SEPARATELY FOR THE YEARS 1914 AND 1915

I. Bakery—

Receipts, 1914	$ 8,802.30
Receipts, 1915	9,833.19
Invoice of equipment (1915)	450.00
Invoice of materials (1915)	949.44
Total	$20,034.93
Disbursements, 1914	$ 8,390.39
Disbursements, 1915	10,316.10
Liabilities for labor (1914)	735.50
Liabilities for labor (1915)	1,075.50
Total	$20,517.49

Loss—$482.56

II. Sheet Metal Works—

Receipts, 1914	$16,188.62
Receipts, 1915	12,601.41
Invoice of equipment (1915)	131.12
Invoice of materials (1915)	1,886.32
Total	$30,807.47
Disbursements, 1914	$11,107.02
Disbursements, 1915	10,980.87
Liabilities for labor (1914)	3,857.50
Liabilities for labor (1915)	2,794.50
Liabilities for materials	1,604.69
Total	$30,344.58

Gain—$462.89

III. Printing—

Receipts, 1914	$18,626.50
Receipts, 1915	22,733.98
Invoice of equipment (1915)	88.16
Invoice of materials (1915)	364.46
Total	$41,813.10
Disbursements, 1914	$ 9,458.36
Disbursements, 1915	15,738.49
Liabilities for labor (1914)	3,257.00
Liabilities for labor (1915)	3,733.00
Total	$32,186.85

Gain—$9,626.25

IV. Brooms and Brushes—

Receipts, 1914	$ 2,066.02
Receipts, 1915	19,378.22
Invoice of equipment (1915)	287.02
Invoice of materials (1915)	8,410.08
Bills receivable (1915)	24.66
Total	$30,166.00
Disbursements, 1914	$10,165.65
Disbursements, 1915	17,342.96
Liabilities for labor (1914)	2,896.00
Liabilities for labor (1915)	4,001.50
Total	$34,406.11

Loss—$4,240.11

V. Garments—

Receipts, 1915	$12,192.88
Invoice of equipment (1915)	1,317.10
Invoice of materials (1915)	5,557.64
Total	$19,067.62
Disbursements, 1915	$12,458.32
Liabilities for labor (1915)	3,125.50
Total	$15,583.82

Gain—$3,483.80

VI. Greenhouse—

Receipts, 1915	$397.55
Invoice of equipment (1915)	250.00
No invoice of materials given	.....
Total	$647.55
Disbursements, 1915	$466.66
Liabilities for labor not given	.....
Total.	$466.66

Gain—$180.89

VII. Junk Yard—

Receipts, 1915	$3,152.95
Invoice of equipment (1915)	2,450.00
No invoice of materials given	.....
Total	$5,602.95

Disbursements, 1915	$3,835.45
Liabilities for labor (1915)	774.50
Total	$4,609.95
Gain—$993.09	
Total gain	$14,746.83
Total losses	4,722.67
Net gain for the two years	$10,024.16

It is to be observed that in the statement of the greenhouse account no mention is made of the materials on hand as an asset or of the liability for the labor. No inventory of materials is given for the junk yard, either. The data for these items are wanting in the original materials furnished by the House of Correction. It may be also noted that the gain reported for the greenhouse is so small that, even if the materials on hand do not equal in value the liabilities for labor, the results are not seriously affected by the presence of this sum among the total gains. If there were materials on hand at the end of 1915 in the junk yard industry they would form an asset and enter into the net gain.

The Relation of the Plan to the Finances of the House of Correction as a Whole

Aside from paying their own expenses, the capital account industries have no relations with the financial conditions of the institution in general. The reasons for this are quite evident when one considers the facts pertinent to the finances of the House of Correction and the causes therefor.

The net cost of operating the House of Correction for the year 1915 was $35,000.00. This shows that the institution is far from being on a self-supporting basis. It will not attain to that state so long as the expense of the hospital for the city's offending sick, conducted at the House of Correction, is charged to its account, and so long as certain classes of other offenders are committed to the House of Correction.

The number of days served by the House of Correction hospital patients was more than 1 per cent of the total number of days served by the inmates of the institution during 1915. And for the year ending May 31, 1916, an average of 28 men were in this hospital, or 1.9% of the male population of the institution.

The finances of the institution are also seriously affected by the

existence of a class of inmates composed of the aged, infirm, crippled, and otherwise unemployable for causes other than that of sickness. This class constituted 8.7% of the male population for the year ending May 31, 1916.

The Relation of the Plan to a City Market

The capital account plan has to do with the production of articles for the city's use. In a way it is dependent upon the city for a market for its goods. Furthermore, this market has to do with the financial success of the plan.

TABLE III

Showing Distribution of Products to City Departments Other Than House of Correction for the Year 1915

Department of Bureau.		Department of Bureau.	
Architecture	$ 31.50	Library	$ 2.50
Bailer	175.25	Maps	1,040.68
Board of Local Improvements	895.04	Mayor	188.63
Bridge	151.25	Medical Inspection	15.00
Building	279.50	Municipal Court Bailiff	304.25
Chief Justice	20.00	Municipal Court Clerk	7,497.15
City Attorney	185.75	Municipal Plant	19.25
City Clerk	10.50	Oil Inspector	4.50
City Collector	1,030.42	Permanent Charter Com.	4.50
City Engineer	44.50	Police	2,391.13
City Hall	6,045.05	Pros. Attorney	68.50
City Physician	12.75	Public Service	187.30
Civil Service	1,028.95	Public Welfare	155.50
Compensation	29.00	Public Works	347.91
Comptroller	1,237.75	Records	12.50
Cook County	36.30	Rivers and Harbors	44.50
Corporation Counsel	55.75	Sewers	164.47
Disigning Division	90.75	Smoke	76.25
Div. Construction	36.50	Special Park Commission	9,417.08
Engineering	962.21	Streets	26,921.03
Exam. Plumbers	2.50	Supplies	1,067.21
Exam. Engineers	14.50	Treasurer	46.00
Finance	21.00	Tuberculosis Sanitarium	13.40
Fire	1,529.63	Water	802.36
Fire Prevention	197.15	Water Meter	82.00
Gas and Electricity	716.56	Water Pipe Extension	767.63
Harbor and Subway	6.00	Weights and Measures	58.00
Health	13,481.72	Total	$80,000.00

Table No. III shows the distribution of the products from the capital account industries to the city departments and gives detailed evidence of the fact that the city furnishes a market for House of Correction products. A city market for House of Correction products increased almost two-fold in two years. For the year ending September 30, 1913, the receipts for services rendered and from sale of products to city departments[107] amounted to $47,000.00, and for the year ending December 31, 1915, to $80,000.00 from the capital account industries alone.

It is impossible to state definitely whether the city has saved or lost on its purchases from the House of Correction, as it has no means of measuring the value of its purchases as yet. But some of the city's agents who were interviewed in regard to this matter confidently affirm that the city is saving on its purchases from the House of Correction. The agent in charge of the purchase of bathing suits for municipal beaches says that the city is saving from 25 to 33 per cent on its purchases of goods from the Bridewell.

The agent who lets the printing for the city departments informs me that the city makes a preferred market for House of Correction printing products. Forms that can be run at an advantage with other forms are sent to the House of Correction. In this way the city is saved a certain per cent that would otherwise go to private printing companies.

One of the superintendents of the Bureau of Streets and Sewers says that the products his department obtains from the House of Correction are inferior in value to those purchasable at the same price from private manufacturers. He further says, however, that even so, the city may be gaining, when everything is considered, by its purchases from the House of Correction.

Relation of the Plan to the Labor of the Institution

An analysis of the distribution of the inmates of the House of Correction among the industries was made in May, 1916. This shows that of the total number of inmates serving sentences of one year or more, 53 per cent were engaged in capital account industries and 67 per cent were otherwise employed; of those serving sentences of from 6 months to 1 year, 20 per cent worked in these industries and 80 per cent in other departments; and of those serving sentences of from 2 to 6 months, 17 per cent were listed in the capital account industries and 83 per cent elsewhere.

[107]Report, City of Chicago. Ibidem. Page 20.

TABLE IV

Showing Actual Distribution of Male Labor Employed in Capital Account Industries; Inmates Working in Contract Shops, January 1914; in Capital Account Industries and in Department Industries; Also the Distribution of Total Male Population, May, 1916

	One Year or More	Six Months to One Year	Two Months to Six Months	Total
	%	%	%	%
Contract shops	57	38	5	100
Capital Account industries	24	37	39	100
Department industries or otherwise engaged	14	38	48	100
Total male population	17	37	46	100

Table IV presents for comparison the percentage distribution according to length of sentence of male inmates employed in contract shops (January, 1914), in capital account industries (May, 1916), in department industries or otherwise (May, 1916), and distribution of total male population (May, 1916).

TABLE V

Showing Actual Distribution of Male Labor Empluoyed in Capital Account Industries, May, 1916, According to Length of Sentence

Length of Sentence	Print Shop	Junk Yard	Tailor Shop or Garments	Broom and Brush	Bakery	Sheet Metal or Steel Industry
1 year or more	10	3	34	11	7	3
6 months to 1 year	9	19	33	6	15	21
2 to 6 months	6	65	12	2	8	16
Average length of sentence.	10 months	2 mos. 26 dys.	10 mos. 22 dys.	1 yr. 20 dys.	7 mos. 6 dys.	5 mos. 22 dys.

Table V gives the actual number of men engaged in the capital account industries according to length of sentence, also the average length of sentence being served in the broom and brush industry (1 year, 20 days), in the garments industry (10 months and 22 days), and in the print shop (10 months) were respectively the three longest average sentences being served in any of the departments of the House of Correction at the time the study was made. It may be observed from the statement of loss and gain that more than 90 per cent of the total profits realized from the operations of the capital account

industries were from the three here shown to have had the longest average inmate service. It is also to be noted that the broom and brush industry reported a loss almost equal to the entire losses reported for the capital account industries, and it had the longest average length of inmate service. There may, therefore, be no causal relation between length of inmate service and profits, but the preference shown by the contract shops for the long sentence inmate is substantial argument, if not evidence, that there is such connection.

The preference of the capital account industries is also shown by Tables IV and V to be for the long sentence inmate. This selection of the economically best labor augurs favorably for the success of the proposed plan.

Conclusions with Reference to the Plan in Its Relation to the Problem of Paying a Wage to Prisoners at the House of Correction, City of Chicago

The House of Correction has developed a plan whereby a part of the inmates can be paid a wage. But this cannot be done on the grounds that the institution is self-supporting, for it is not, as the figures given above show. The fact that the institution is costing the city for its support does not necessarily discredit the plan. For the House of Correction is charged with the care of a considerable number of sick, crippled, aged and infirm, who are not only unable to earn the cost of their maintenance, but are a burden on the institution. It seems unfair to charge the cost of the support of those who are unemployable or of those unable to earn the cost of their keep to the productive labor of the able-bodied inmates. This fact justifies the proposed plan in selecting the most capable inmates and permitting them to work in the most productive industries, where they can earn the cost of their keep and a wage in addition.

This plan is probably also limited as to the number of inmates it can be made to serve by reason of the large number of short sentence offenders committed to the House of Correction. The short sentence prisoner can hardly be made more than self-supporting. There is a certain amount of expense connected with the induction of every inmate into the institutions. So the larger the number of the new inmates, the smaller the returns from their labor. Furthermore, the problem of adjusting the new inmate to the changed conditions of his life and of fitting him into the order of the prison industries also makes the short term prisoner economically undesirable.

Undoubtedly a part of the present population of the House of Correction should be handled in some other way than is now provided for in the present system. The suspended sentence system, such as is used by Judge De Lacey of Washington, D. C., would be a decided aid in caring for part of the domestic relations cases.[108] The penal farm colony, as it has been developed in Kansas City and elsewhere, is needed to care for certain other classes of the short sentence offenders.

If these supplementary agencies were used and the hospital cases were charged to some other account than that of the maintenance fund of the institution, and certain initial expenses were provided for by appropriations from the city's funds, as was stated above, the entire remaining population might be made self-supporting and wage-earning under the plan proposed.

CHAPTER VI

Arguments For and Against Paying Prisoners for Their Labor

In a historical discussion data from authenticated records are necessary. In questions of a legal nature the wording of a statute and its interpretation are important. In carrying out a financial project the opinion of an accountant is valuable. But these methods do not exhaust the possible considerations of a topic that is in a state of uncertainty and deliberation. Arguments, too, have weight in judging the merits of a matter while it is in this state. For experience has not had an opportunity to make valid or void the theories that are propounded. So a review of the arguments for and against the project is in place here.

A fundamental principle of criminal law is that a person guilty of criminal offenses may be deprived of his liberty only. Does this carry with it the right to deprive a man of his earnings, too; or is it like the pound of flesh that lawfully belonged to Shylock? Must society take away a man's liberty without injury to his person or to his business? It seems only just to demand that it be taken with as little injury to both person and property as possible. Of course, one cannot be deprived of one's liberty and still be free to carry on business affairs outside the place of confinement. The payment to the

[108]The Municipal Court records show that during the year 1916 the number of sentences given on Domestic Relation Charges were 624; that the number of days served under these sentences amounted to 46,456 or an average of 74 days to a sentence.

prisoner of an equitable proportion of his earnings would in a measure satisfy the demand of justice in this regard.

When the state withholds all the convict's earnings it is said: "the state sets him a thief's example by stealing his wages.[109] The earnings of several state penitentiaries are large. The report of the State Convict Board of Alabama showed that the total gross earnings for the year ending September 10, 1912, were $1,073,286.16. These figures do not include the earnings of one hundred convicts employed on the state farm, from whom the state would have received $30,000.00 more if they had been leased on the same terms as the others.[110]

The Kentucky penitentiary, located at Frankfort, made improvements to the amount of $40,905.55, and in addition to these the warden reports a surplus in cash profit over and above all expenses of $30,026.21.[111]

The Maryland State Penitentiary report shows that the prisoners earned $141,233.35 for the institution and by overwork $32,937.73 for themselves.[112]

The Maryland Penitentiary officials received from all sources during the preceding five years (1905-1910) $411,022.58; disbursed the sum of $357,818.95; paid into the state treasury the sum of $45,000.00, and there was on hand at the date of the report (1910-1911) $8,203.63. There is to be set over against these figures the fact that for the same period the prisoners earned for themselves on an average $11.73 1/3 by overwork.[113]

The annual report of the State Prison, located at Thomoston, Maine, for the year 1911, shows an average individual profit over and above subsistence and clothing of $52.22; for the year 1912 the average individual profit was $42.17.[114]

The State of Texas had during the fiscal years ending August 31, 1909, and August 31, 1910, 861 convicts employed on contract forces, 831 on share forces, and 185 on the railroad. The labor furnished to contract forces was at $29.00 per man per month for whites.[115]

[109]North Am. Rev. W. D. Howells: "Some Unpalatable Suggestions." Vol. 188, p. 254. 1908.

[110]Outlook, Vol. 102, p. 7. Dec. 7, 1912.

[111]Annual Report of the Board of Prison Commissioners for year ending Nov. 30, 1911, p. 15.

[112]Annual Report of the Directors and Wardens of the Maryland Penitentiary, 1912, p. 5.

[113]Maryland. Annual Report of the Board of Managers and the Superintendent of a Maryland House of Correction for the Years 1910-11.

[114]Annual Report of the Maine State Prison. Thomoston, 1911, p. 15; 1912, p. 17.

[115]Texas State Penitentiary for the fiscal years ending Aug. 31, 1909,-10, p. 15.

There were two railroad forces: the Santa Fe, composed of 75 negroes, and the Sugarland Railroad force, composed of 125 white men. For the negroes the state receives $1.25 per day and for the whites $29.00 per month on the railroad forces.

According to the Leavenworth, Kansas, *Post,* the State Prison at Lansing saved the State about one-half million dollars during the fiscal year ending June 30, 1913. This, according to those who should know, is a very conservative estimate. It represents about one-half of the appropriation asked for by the warden to be used in constructing the new penitentiary. The twine and brick plants and the coal mines are the different departments in which most of the saving was made.

The twine plant supplied the farmers of Kansas with $3,000,000.00 worth of twine last year at 9½ cents a pound. This represents a net profit of $32,000, which went into the State treasury. If the farmers had been forced to buy from outside dealers at 11 cents a pound, it would have cost them $45,000 more. This $45,000 and the $32,000 represents a total of $77,000 saved the citizens of Kansas in twine.[115a]

The prison burns its own brick and lime and supplies brick to the different institutions over the State. The prison brickyard manufactured for the use of State institutions in 1912, 1,623,447 bricks of different grades. The prison received credit on the brick account for $2,198. This was an average of about $2.00 a thousand less than the same quality of brick sold for on the market. If these different institutions had been forced to buy on the open market, the cost to the State would have been $15,344. This does not take into consideration the brick used in the construction of the new twine plant and other small buildings in the prison yard.

The coal mine is the big money-maker for the State. Last year the different institutions received 31,000 tons of coal from the prison, for which the prison was credited with $77,500, or $2.50 per ton. It is said that if the State had been forced to buy this coal on the open market, together with the 20,000 tons it takes annually to run the prison, it would have cost the State at least $155,000.[116]

The profits of the twine industry and of the manufacturing plant of the new penitentiary at Stillwater, Minnesota, for the two years ending August 1, 1914, were $687,794, or at the rate of more than $300,000 each year. It is estimated that the annual profits to the

[115a]The data are given as they appear in *The Delinquent,* Vol. IV, No. 3, March, 1914, p. 15. It is impossible to understand how the compiler of the data uses his figures to get these results. An error is evident.

[116]The Delinquent, Vol. IV, No. 3, March, 1914, page 15.

State will increase rather than decrease. This new penitentiary has cost about $2,500,000, and for this expense the State has incurred annual financial responsibilities for $250,000 for the next ten years. (Really it will not cost the taxpayers a single cent, as the yearly profit will in all probability exceed $250,000. This, of course, is merely speculation. But it shows how men are looking upon the Minnesota prison.)

The following table of receipts and earnings of inmates for the year 1914 shows the dealings of the Stillwater, Minnesota, Penitentiary with its inmates:[117]

Total earnings	$68,964.26
Paid on discharge and parole	16,946.60
Dentist	4,543.80
Optician	1,297.20
Special allowance for support of families	5,005.40
Toilet supplies	7,614.38
Money sent away or paid to others by special permission	3,627.67
Money sent to relatives	17,085.96
Newspapers, books, etc	3,292.31
Attorneys' fees	1,413.10
Christmas apple and candy fund	542.44
Miscellaneous	1,800.09
Average population for twelve months	1,113
Expense per capita	$238.52
Earnings per capita	429.12
Excess earnings over expenses	190.60

The report for the West Virginia Penitentiary shows a surplus of $69,627.18 after all bills were paid.[118]

The earnings of the New Hampshire State Prison for the two years ending August 31, 1912, were sufficient to pay all expenses and leave a balance, including appropriations of $4,980.15, of $12,814.98.[119]

These facts make the financial injustice of the State which does not pay its prisoners strikingly apparent. The only way the State can free itself from this crime against criminals is by paying its prisoners a just and equitable portion of their earnings.

Judge Gemmill of the Municipal Court, Chicago, says:

"The State owes to the prisoner and his family the duty of sharing with them a portion of each prisoner's earnings as soon as such earnings are in excess of the cost of his maintenance. A prison should never be-

[117]Eighteenth Biennial Report, Minnesota State Prison, pages 56, 61.
[118]Biennial Report of the West Virginia Penitentiary, 1907-8, pp. 195-6.
[119]Biennial Report of the New Hampshire State Prison for the two years ending Aug. 31, 1912, Vol. I, Part XIV, p. 483.

come an asset of the State. It should always be regarded as a necessary evil. The fewer prisoners a State necessarily has, the greater should be the pride in its citizenship . . ."[120]

The paying of prisoners is not only a demand of justice, but it is also a demand of expediency. The penal and reformatory institutions of the state are not primarily money-making institutions. It is not necessary to run them with the least possible expense to the State. If, however, a way can be found that will save expense to the State and at the same time prove most effective in rehabilitating the prisoners, it is all the more commendable. The paying of prisoners reduces the cost of administering the institution.

The North Dakota Prison report states that under the honor system the efficiency of the labor in the penitentiary has materially increased; that there has been a material decrease in the expense for officers and guards to supervise the institution.[121] And in the same report the warden requests that the institution be put on a profit-sharing basis. This is a necessary feature of the honor system. A man cannot be expected to be on his honor while some one else is robbing him. Nor can he be expected to co-operate in reducing expense and loss. Retaliation on the part of the State calls for the same from the prisoner.

Mr. Eaman of the State of Michigan says:

"It has been our experience in Michigan that the compensation of prisoners has not only made for better prison discipline, but has tended toward reformation, and has enabled men to feel more like men, and it is our hope and aim to increase our compensation from about fifteen cents a day to twenty-five cents a day. It has enabled us to make money out of the industries, and as soon as we have paid the men a little compensation for the overtime, we have found that the industries have turned from a losing venture to one that pays money to the state and to the prisoners as well. We find that we who are paying the convicts, as the State of Michigan and the other states where they allow compensation to prisoners, are helping ourselves solve the prison problem and the convict problem of the State."[122]

The married convict needs wages that he may support his wife and children. A man's relatives are not to be punished for his crime. This is an important principle of modern criminal law. In the more ancient savage states of society the offender's entire family came in for a part of the punishment often. The incident of Achan is familiar

[120]This JOURNAL, Vol. VI, No. 4, Nov., 1915, p. 508.

[121]First Biennial Report of the Board of Control of State Matters for a Period Ending June 3, 1912, page 33.

[122]Jnl. of the Am. Inst. of Criminal Law and Criminology, Vol. 6, page 519.

to Bible readers.[123] The Bedouins still claim the blood not only from the actual homicide, but from all his relations. Such claims constitute blood revenge. This has prevailed, or still prevails, among the Japanese, Cordeans, the Persians and Hindus, the Ancient Greeks and Teutons.[124]

We have abolished this practice in theory and purpose, but in not a few cases the execution of the law still works severe punishment to innocent women and children. When the husband and father is imprisoned at hard labor without compensation, his wife is worse than a widow; his children worse than orphans. These have first claim, morally, to the fruits of the father's labors, and the State wrongs both them and itself when it intervenes in this way.

The method in vogue in Chicago is to turn the family over to the care of the United Charities and the Cook County Agent while the husband is serving his sentence in the House of Correction. In order to learn how this method works, the records of the United Charities were consulted and several cases were thoroughly examined. The following are the conclusions reached:

1. It places a heavy burden on charity organizations.

The records of 45 cases were studied to ascertain the cost of supporting families during the imprisonment of the heads of these families. Thirty-five of the cases studied are recorded in the United Charities offices. Ten cases are from the records of the Bureau of Personal Service in Chicago.

Nine of the 35 cases were found in the records in the Northwest District of Chicago; these had been aided also by the Cook County Agent. These are typical cases of those who receive aid from both the charities and the county. The tables present the complete imprisonment record and the entire amount contributed annually to these families. They show plainly that the years in which the heads of the families were in the House of Correction were the years when the burden of the financial support of the family was heaviest on the charitable agencies. (See Tables Nos. VI and VII.)

Four cases whose records show that the head of the family served one or more sentences in the House of Correction, and that considerable money had been paid by the United Charities for the support of their families were selected for detailed investigation. Every detail given in connection with these cases was gathered. One of the four

[123]Joshua vii:24-26.

[124]Westermark: The Origin and Development of Moral Ideas, Vol. I, pp. 31 and 32.

TABLE VI

IMPRISONMENT RECORD OF NINE MEN WHOSE FAMILIES WERE AIDED BY THE UNITED CHARITIES OF CHICAGO AND BY THE COOK COUNTY AGENT

	Earliest U. C. Record	1909	1910	1911	1912	1913	1914	1915	1916
1. K.	Feb. 15, 1913						Oct. 2, '14 in H. of C. for 6 mos.	(3 mos. of sentence falls in 1915)	
2. K.	April 11, 1911					Oct. in H. of C. for 1 mo.		Jan. 12 in H. of C. for 6 mos. Oct. 17 in H. of C. for 2 mos.	
3. K.	Oct., 1911			Oct. 11 in H. of C. 1 mo.	Sept. 18, 1912, given 6 mos. in H. of C.	Out Mar. 15, 1913			Mar. 17 put on probation for 1 yr.
4. B.	Nov. 23, 1914						Nov. 23 in H. of C. 6 mos.	(5 mos. of sentence falls in 1915)	
5. W.	Feb. 9, 1911			Aug. 8 in H. of C. for 1 mo. Released Aug. 26		June 3 in for 6 mos.	Oct. 26 in H of C. again		
6. W.	Feb. 13, 1915							Feb. 13 in H. of C. for 6 mos.	
7. M.	1909	Dec. in H. of C. for 2 mos.	1 mo. of sentence falls in '10 April 22	1 mo. of sentence falls in 1911			Oct. 19 in H. of C. 2 mos.		
8. P.	Oct. 5, 1914		In H. of C. for 2 mos. Nov. 10 in H of C. for 3 mos.				Oct. 5, '14, H. of C. 1 mo.		
9. S.	Aug. 17, 1913						Oct. 22 in H. of C. for 2 mos.		

TABLE VII

SHOWING ANNUAL PAYMENTS TO FAMILIES BY THE U.C. AND C.C.A. WHILE HEADS ARE IN H. OF C.

	1909		1910		1911		1912		1913		1914		1915		*1916		
	C.C.A.	U.C.	C.C.A.	U.C.	C.C.A.	U.C.	C.C.A.	U.C.	C.C.A.	U.C.	C.C.A.	U.C.	C.C.A.	U.C.	C.C.A.	U.C.	Total
1. R. ...	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	$24.00	.....	$27.00	.....	.....	.....	$ 51.00
	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	$2.00	.....	.....	.....	.....	2.00
2. K. ...	.....	.....	.....	.....	$3.00	.....	$25.00	.....	$12.00	.....	35.00	.....	33.00	.....	$26.00	.....	134.00
	.....	.....	.....	.....	.....	$2.00	.....	.....	.....	.....	.....	80.20	.....	$13.65	.....	$10.50	106.35
3. K. ...	.....	.....	.....	.....	5.00	.....	28.00	.....	30.00	.....	.....	.....	.....	.....	.....	.....	63.00
	.....	.....	.....	.....	.....	.....	.....	$92.57	.....	$69.44	.....	.....	.....	16.10	.....	13.00	191.11
4. B. ...	.....	.....	.....	.....	15.00	.....	.....	.....	.....	.....	.....	.....	3.00	.....	.....	.....	18.00
	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	28.50	.....	.....	.....	.....	28.50
5. W. ...	.....	.....	.....	.....	30.00	.....	18.00	.....	45.00	.....	30.00	.....	32.00	.....	.....	.....	155.00
	.....	.....	.....	.....	.....	5.36	.....	9.00	.....	39.34	.....	41.53	.....	5.25	.....	.....	100.48
6. W. ...	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	23.00	.....	.....	.....	23.00
	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	28.00	.....	.....	28.00
7. M. ...	$35.00	.....	.....	.....	.....	.....	.....	.....	.....	.....	15.00	.....	25.00	.....	.....	.....	75.00
	.....	$18.89	.....	$13.69	.....	50.00	.....	.....	.....	.....	.....	12.38	.....	.....	.....	.....	94.96
8. P. ...	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	10.00	.....	5.00	.....	.....	.....	15.00
	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	23.75	.....	15.00	.....	.....	38.75
9. S.	.....	.....	.....	.....	.....	.....	14.00	.....	.....	.....	26.00	.....	25.00	.....	.....	.....	65.00
	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	6.55	.....	25.30	.....	.....	31.85
Total...	$35.00	$18.89	.....	$13.69	$53.00	$57.36	$85.00	$101.57	$87.00	$108.78	$140.00	$194.91	$173.00	$103.30	$26.00	$23.50	$1,221.00

*To June 1.

cases is graphically presented here—the case on which the United Charities expended much money and which presents a long period of imprisonment. (See diagram.)

The other three cases may be briefly summarized thus:

S. Z. had begged of pastors for three years. He was arrested and put in the House of Correction for three months, October 10, 1914. The records show that during the last three months of 1914 and the first three months of 1915 the United Charities contributed about $100.00 to the support of his family. Only scattering aid had been given before. (The man's imprisonment seems to have been a mere substitution for begging. Morally speaking, was it anything more?)

J. F. stole; he was sent to the House of Correction for three months and was released January 20, 1916. Out of a total of $88.70 contributed to the support of his family $47.75 is given during the three months that he was in prison.

Mr. B.'s family received a little aid occasionally for four years. He was in the House of Correction three times. The first two sentences were short. But in July, 1915, he was put in for a year. During this time the United Charities expended for his family $248.99 out of a total of $310.32 expended during nearly five years.

Table VI shows that the nine men whose record was examined served more than 31 months in the House of Correction during the years 1914 and 1915.

Table VII shows that the C. C. A. and the U. C. together contributed $1,221.00 to the support of these families during the years 1909 to 1915, inclusive. Of the amount, $1,153.42 was paid during the years 1911, 1912, 1913, 1914, and 1915. And of this amount, $611.21 was paid in the years 1914 and 1915. The years in which the bulk of the sentences fell are the years in which the heavy contributing is done by these agencies.

The ten cases furnished by the Bureau of Personal Service give evidence of the fact that the Jewish Charities expend much money for the support of the families of the inmates of the House of Correction who belong to that race. The cost for the ten men whose total imprisonment records amount to about nine years was $2,212.32. The cost given is only for the number of days or months of service in the House of Correction. In many of these cases the men were absent from home and the Jewish Charities supported the families entirely, but this figure does not appear in the data given.

2. In come cases the imprisonment of the husband tends to make his wife more lenient toward him. Frequently the wife goes and begs the court to release her husband that he may help with the support of

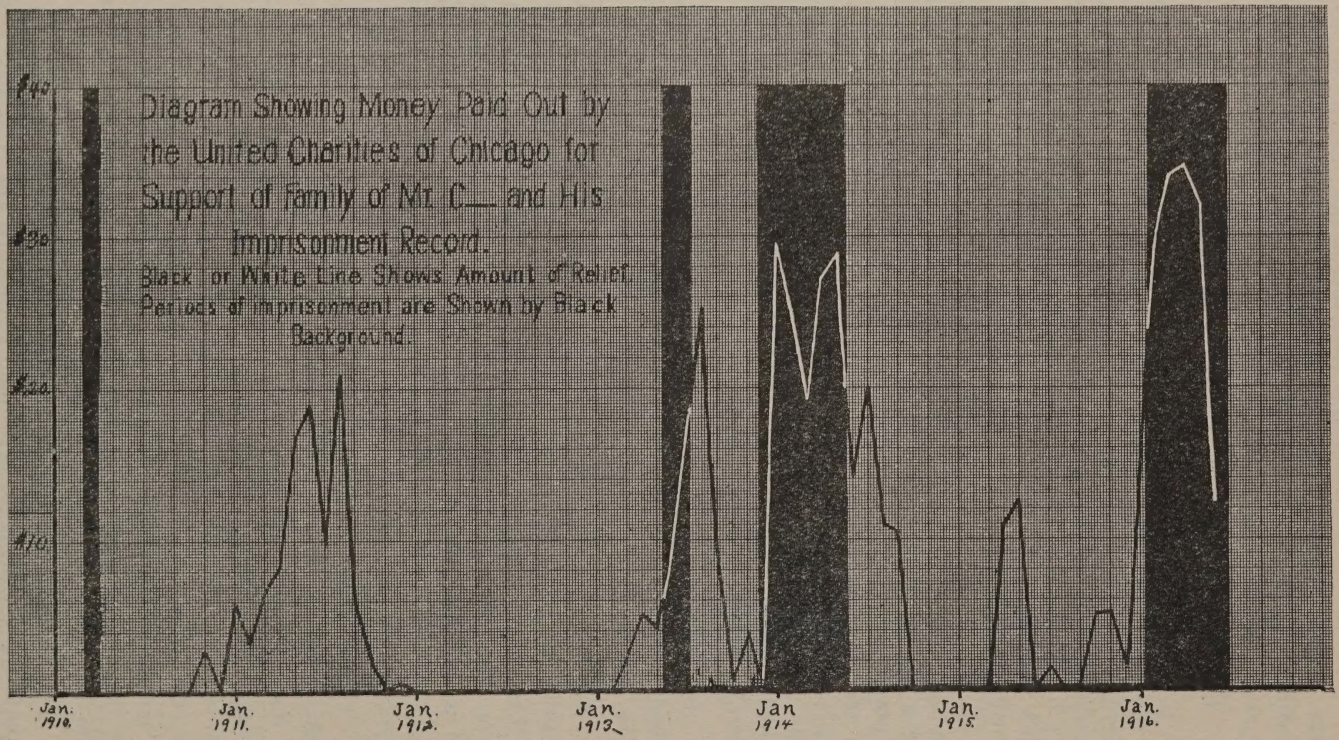
Diagram Showing Money Paid Out by the United Charities of Chicago for Support of Family of Mr. C— and His Imprisonment Record.
Black or White Line Shows Amount of Relief
Periods of Imprisonment are Shown by Black Background.
$40
$30
$20
$10
Jan. 1910.
Jan. 1911.
Jan. 1912.
Jan. 1913.
Jan 1914
Jan. 1915.
Jan. 1916.

the family. This often happens even where the wife has had her husband arrested for abuse or non-support. The following case is illustrative:

Phillip S. "Each time the effect of the man's imprisonment was to strengthen the desire of the woman to have her husband at home, and to defend him for his negligence to support her on the ground that he was physically unable to work. This might have been somewhat the case, but the man was too habitually a deserter to be justified. Furthermore, the charities, through their aid, encouraged the woman to forgive him, and lessened the responsibilities of the man."

3. In some cases it pauperizes the family or tends to do so. "Pat Mc." has served three or four court sentences. Each sentence has meant from three to six or seven hearings. Regular relief has been given every winter since the office has known the family, as "Mr. Mac." has spent every winter in the House of Correction. Each time he is released he makes less effort to get work and support his family. The United Charities paid out $77.50 for this family for food from January to June, 1913. And since June 30th it gave $128.00 in relief work. The Cook County Agent has helped this family, too.

Dominick P. was committed to the House of Correction April 5, 1912, to work out a fine of $200.00 and costs. The United Charities expended $76.90 for the support of his family. He was released from the House of Correction September 17, 1912. But before he was released the United Charities had Mr. Whitman present to him the bill. On October 18, 1912, the United Charities' visitor called and found Mr. P. at home. He told the visitor that there was no need of their sending the bill to him because when the case came up the United Charities promised to support his wife and children while he was in the House of Correction. He also said that the rent was due on the 15th of the month while he was still in the House of Correction so the United Charities must pay the bill, otherwise he would go to the judge about it.

(The very woman with whom he had illicit relations and for which he was sentenced to imprisonment helped to give a celebration in honor of his release from the House of Correction.)

Mrs. S. seems to feel that it was the duty of the United Charities to take care of her, now that her husband is in the Bridewell, although she admitted that he had contributed almost nothing to her support previous to this time.

April 4, 1910. Visitor feels that Mrs. Anton M. was spoiled by the attention which she received in the winter and that she feels that she would be supported more easily if her husband were in the House of Correction.

4. Some women pluckily accept the conditions and set to work to support the family by their own efforts.

Mrs. K. is the mother of three children; supports the family by keeping boarders and roomers while her husband is in the Bridewell.

Mrs. Antonio M. is the mother of seven children. Her husband was arrested and sentenced to the Bridewell October 27, 1914, for six months. After release he deserted entirely. For two years Mrs. M. supported her large family by working in laundry where she received $8.50 a week. The work is hard on her and the children. Her health is showing the results.

Mrs. Mike W. is trying to support herself and two children by working and scrubbing while her husband is serving a six months' sentence in the Bridewell. She got in arrears with the rent three months and is unable to pay.

Antony B. has a wife and six children; the children are all under ten years of age. Mr. B. drank ever since he was married. His wife had him arrested six times through the Chicago Avenue Police Station. In August, 1915, he was put in the Bridewell for six weeks and was arrested a week ago and sentenced for two months. In 1913 he and Mrs. B. started a savings account with the 17th Ward Building and Loan Association and made the payments. They now have $109.00 to their credit, but the book is in his name and she can withdraw no money. She owes about $60.00 to friends and a grocer.

With such facts as these before one, he must conclude that the earnings of the married prisoner should be directed by the prison authorities to the support of his family. This will help the mother to keep the family together and to send the children to school. The family is the primary unit of society; its integrity must be maintained.

Moreover, for a husband to be supporting his family is in itself morally uplifting. This provides an interest for him of unequalled superiority. And when the day of release comes, what better protection can a man have against relapse into crime than the family which he has been supporting by his labor during his period of reformation? The fact that he is supporting his family assures him a welcome home when he is released, and this is in itself an aid to hopeful effort on the prisoner's part.

What is true of the married prisoner is in a measure true of the unmarried man who has parents or other relatives dependent upon him. To permit and make it possible for him to continue to support these, is a factor in his reformation. A man's task is his salvation both inside the prison and out of it. To take away this task or the possibility of his performing it, is to wrong him and those to whom he is under obligation.

4. The paying of wages to prisoners is beneficial to themselves. We are quite agreed today that one of the prominent purposes of punishment is the reformation of the criminal. Voluntary, purposeful work on the prisoner's part is a vital factor in this reformation.

Now, men outside the prison have the stimulus of reward to enable them to work. Men in prison need the same stimulus and are wronged if they are deprived of it.

The institution that offers its inmates pay affords them an opportunity to join the ranks of honest labor. A prison may compel its inmates to labor without the inducement that a wage affords. But such compulsion cannot be exercised beyond the period of confinement, for this is a feature foreign to the normal conditions of life. The kind of labor the prisoner needs is such as will stimulate his will for work.

Reward for his labor will do this if anything can. The weakness of will is probably the prisoner's chief defect, and this is society's opportunity to help him strengthen it. A proper system of paying prisoners is an important part of such a system.

A man compelled to labor for another without reward is in danger of losing—if he has ever had it—a sense of the value of labor. This is a serious loss. And the State is its own enemy if it causes such a loss to its subjects. If the circumstances of a man's life have been such that he has never learned the worth of labor, the State's duty is to teach this important lesson to him during his period of imprisonment.

Prison life does not develop habits of industry, thrift, and self-reliance. This is a serious defect. Everything is provided for the well-being, health and existence of the prisoner without any care or effort on his part. It is affirmed that the average "long-term man is lacking in forethought and provision for the morrow." These are qualities of great value to the man at liberty. To deprive a man of them is to do him a great wrong. A proper system of paying the prisoner an equitable portion of his wages, charging him for his board, clothing, etc., would do away with such atrophying of the capacities for self-reliance and foresight.

5. The paying of prisoners would make it possible for those without a family to support, but who have caused financial loss to others, to make restitution. There can be no surer evidence of an offender's reformation than his desire to make restitution to those whom he has wronged. But the practice of penal labor without reward takes away the possibility of such restitution. The State, by such methods of reformation, is not encouraging its offenders to assume any responsibility for their offenses. In France, the State may require prisoners to make restitution out of their earnings. This is entirely in harmony with the best policy for the reformation of a

criminal. It encourages him to take thought for others; helps him to develop a sense of responsibility for his conduct and affords him a reasonable basis for believing that he is forgiven both by society and by the individual wronged.

6. The problem of discipline is greatly reduced by paying wages to prisoners. The discipline and control of an army of lawbreakers is at best a difficult task. But this is largely accomplished when the convicts learn that the State has their ultimate well-being as the primary object in giving them the treatment it does. There can be no more convincing proof of this than the placing of a certain and equitable portion of the prisoner's earnings to their credit. This conduces to a better feeling toward the prison government on the prisoner's part and serves as an incentive to good behavior. The value of such a force in promoting the discipline of the institution cannot be overestimated.

When the California prison management had changed from working its prisoners in the manufacture of jute bags and crushing rock to the making of articles for State use (work which taught useful trades) the warden reported the following effect: The prisoners are nearly all anxious to work in the shops, and when so assigned they come to work in the morning with enthusiasm, show a livelier interest than those similarly employed outside the prison walls, make the enforcement of discipline superfluous, and in every way display appreciation for an opportunity to learn a useful occupation.

Arguments Against the Paying of Wages to Prisoners

1. Criminals are an enormous burden to the State. They make necessary the expenditure of large sums of money annually for their arrest, trial, detention and maintenance. The criminal ought to pay the State for these costs. Taxpayers are already havily taxed to maintain its penal and reformatory institutions. What justifiable reason can there be for adding to an already heavy burden that of paying wages to criminals? This would simply be paying a premium for crime; the greater the crime, the larger the premium.

The Boston Herald says:

"When the new prison[125] commissioner advocates the dedication of the earnings of the prisoner to the support of his family, or if he has no family that they should be held for his benefit when he is released he is proposing to load upon the State a charge which it ought not to bear. The State is

[125]The Delinquent, Vol. IV, No. 3, March, 1914, page 14.

entitled to the proceeds of the labor of its prisoners. With the handicaps which have been imposed upon prison labor by legislation such labor is not and cannot be self-supporting. The goods that prisoners make are excluded from the general market. Power machines are forbidden, for the most part, except in wood working."

Take the State farm, where the conditions are such that, if anywhere, the institution could be made self-supporting. With all possible use made of prison labor, the average cost for the care of inmates above the proceeds of this work is in the neighborhood of $2.50 per week. Of course, the able-bodied, short-term men come nearer than that to self-support. But that is the average outlay for maintenance, allowing nothing for interest on the plant. The State has been put to the cost of ferreting out the criminal, arresting, trying, and convicting him. The State must provide for his safe-keeping, clothe him, feed him, shelter him with proper warmth. Under restrictions surrounding prison labor he will not nearly meet the expense to which he has subjected the State. If his family needs support while he is imprisoned, let the municipality provide that. With all the work he can do, the criminal is a burden to the commonwealth. The State is entitled to all he can do towards self-support.

The question was put to a New York official: Why can these prisoners not earn wages in prison and support their dependent families? The Empire State answered:

"No reformatory institution in the State of New York is earning enough to cover the cost of its maintenance.[126]

"The convict population of the State of New York[127] at present (April, 1914) is 4,604, an increase of 88 over a year ago. The highest number confined at any time during the last year was 4,838. The total cost of maintenance during the fiscal year was $814,583. Sing Sing earned $73,371.50, a decrease of $3,513 over the previous year. Auburn earned $29,167.45, a decrease of $39,954. Clinton earned $36,963.72, a decrease of $7,811."

The Kentucky prison, located at Eddyville, reported a deficit of $28,316.33 for the year 1910.[128] The report of the Michigan State House of Correction and Branch of the State Prison in the Upper Peninsula shows that the prisoners earned about half enough to cover the annual expense of maintaining the institution. This does not take

[126]The Sixty-eighth Annual Report of the Prison Association of New York, 1912, page 51.

[127]The Delinquent, Vol. IV, No. 4, April, 1914, p. 21.

[128]Annual Report of the Board of Prison Commissioners, Ky., 1911, p. 15.

into account the cost of establishment, equipment, and upkeep of the institution.[129]

The following facts show the uselessness of many of the laws enacted for the paying of a wage to prisoners:

Several years ago California enacted a law whereby $1.50 per day might be paid to the dependent families of prisoners; yet the law is a dead letter, mainly because its enforcement was left to the discretion of the various county authorities.

In 1911 the State of Texas enacted a law which provided for the payment of 10 cents per day to prisoners or their families. The law was in operation from June, 1911, to June, 1913, during which time $136,905.64 was paid to prisoners or their families. It was found that the prisoners were not self-sustaining and in 1914 the Attorney-General gave his opinion that the law was unconstitutional, and it became inoperative. (See under Legal Situation, *supra.*)

In 1913 Kentucky passed a law providing for the compensation of prisoners. A small amount was paid to dependent families, but opposition arose and the matter was taken to the court of appeals, which declared the law unconstitutional. (See under Legal Situation.)

In 1912 the State of Nebraska enacted a similar law, but nothing has yet been paid under it, because the Legislature has steadfastly refused to appropriate money for that purpose.

New Hampshire passed such a law in 1912, but owing to the fact that the State was already overburdened with taxation, the Legislature refused to appropriate the necessary money to make the law effective.

New Jersey, in 1912, passed a law providing that a sum not to exceed 50 cents per day was to be allowed to prisoners, and that it should be paid either to them or their dependent families, as the Prison Board might determine. No appropriations have been made to carry out the provisions of the law.

Pennsylvania has long had a law which provides that the earnings of prisoners, after deducting the cost of lodging, clothing and food, shall be paid to them or their families, but the time has not yet arrived when there were any earnings after paying the costs of lodging, clothing and food. For this reason nothing has yet been paid.

2. Moreover, money in the hands of the prisoner is the worst thing he could have. Dr. Aschaffenburg, who has dealt with thousands of prisoners in Germany, says that under no condition must the

[129]Biennial Report of the State House of Correction and Branch of the State Prison of the Upper Peninsula for the Two Years ending June 30, 1912, page 6.

prisoner receive money into his own keeping. Paying prisoners wages means that eventually this money will come into their hands.[130]

The State Agent of the Minnesota State Prison reports quite unfavorably concerning the system of good conduct earnings in vogue in his State. He says:

"For the past two years I have carefully watched the effect of good conduct earnings upon prisoners discharged direct from the penitentiary, and the result of my observation is that a larger number have been positively injured by the State's generosity than have received any substantial benefit from it. We have tried to obviate the harmful tendency by holding back all moneys due them, not actually needed for immediate use upon discharge, as the law allows the warden to do, but this appears to afford a doubtful or at least but temporary relief. As a rule, the discharged prisoners regard this money as justly due them upon discharge by reason of its allowance by law, and in consequence they become very bitter against the management for its pains in trying to protect them. As a rule they will not look for or accept work as long as any of this money is left. Many of them, naturally independent, live only in the present, and squander the money as fast as they can get it in spite of all that can be done to prevent it. With money gone, they face the world in a worse condition than if they had been discharged from prison with only enough money for immediate needs . . .

"The State is very liberal in the amount of money paid to the prisoner, the average amount paid to each man, upon his discharge, being about fifty-five dollars. Many of these men tell me that their crime was committed while under the influence of liquor, or in company with bad associates; yet, upon their discharge they will take the money generously paid them by the State and by returning to their former vicious habits or associates, place themselves in the condition to again commit crime, thereby making the State almost a party to the same.

"I have tried to correct this by withholding their good conduct earnings, paying the same in installments. This in some cases has worked well; in others, it is not satisfactory, as it only serves to prolong their period of debauchery, and my opinion is that our system of good conduct earnings is not without fault . . ."[131]

The main arguments brought forth in favor of and against the system of paying a wage to prisoners have been canvassed. They set the matter before us. We are at liberty to draw our own conclusions, but before doing so, it seems wise to digress apparently from our subject to consider the objects of penal labor that a foundation may be laid on which to base our conclusions. This is done in the following chapter.

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[130] Aschaffenburg: "Crime and Its Repression," p. 237.

[131] Eighth Biennial Report of the Inspectors and Warden of the State Prison of Minn., 1894, pp. 1-56

CHAPTER VII.

Conclusion

What has been established by the study up to this point? The investigation shows that a method of paying prisoners formed a part of the early penal system in the American colonies. The principle of this system was never abandoned voluntarily, but as a result of changed circumstances.

Compensation in the form of gratuities was a part of a most successful plan in operation in Irish prisons during the last half of the nineteenth century. The following figures are evidence of its success there. The number of persons convicted and sent to the convict prisons of Ireland (answering to our State prisons) was 710 in the year 1854; this number had fallen to 331 in 1860, to 245 in 1870, and to 123 in 1881. The number of commitments for minor offenses showed that the general volume of crime had undergone a vast reduction during the period. On the first day of January, 1851, the prisoners of all classes in the county and borough goals of Ireland numbered 10,084. On the first of January, 1881, they numbered 2,476. The 10,000 prisoners found in the minor prisons on the first day of January, 1851, were only a part of those under confinement for the lesser crimes. The bridewells in Ireland received in 1850, 88,899 prisoners; in 1881 they received 3,888.[132]

The "efficiency" of the Irish system was proved "by the orderly conduct of the prisoners and by the empty state of the prisons, notwithstanding the strict appliances in force for bringing old offenders to justice"; the "economy" of it by the very low cost of the Irish convict establishments, although the supervision of a small number of prisoners is always proportionately more expensive.[133] The Phillipstown Prison was closed, thus further reducing the expense to the State.

The legal survey shows that there is an effort being made to reestablish a wage-paying scheme as a part of our penal system. The success of this effort is shown by a report made at the annual meeting of the American Prison Association in 1917. This committee had been appointed at the 1916 meeting of the Association to investigate the matter of compensation of prisoners and report at the 1917 meeting the States in which compensation is determined and paid, and what action, if any, should be taken by the Association to place this information before Congress, with a view of securing the necessary legislation to provide compensation for United States and District of Columbia prisoners.

[132]The National Prison Association of the U. S. A. First Annual Report, p. 18. "Prison Reform: A Measure of Political Economy," by Eugene Smith.
[133]Carpenter: "Our Convicts," Vol. II, p. 196.

Of the states reporting any compensation at all, New York seems to pay the lowest amount: from 1½ to 20 cents per day is provided by law, but only the minimum figure is allowed. A special law for Erie County permits the payment of 10 cents per day to prisoners employed at roadwork.[134] Kansas reported that it pays 3¾ cents per day; Maine pays 25 cents per day; Ohio, 1 cent, 2 cents and 5 cents per hour; Pennsylvania reported that from 10 to 50 cents is authorized by law, but no appropriation is made for paying it. Washington reported authorization by law, but no provision for carrying it out. Wisconsin Reformatory pays 10 cents and 13 cents per day. Wyoming pays $5 per month for roadwork only. Minnesota pays at its reformatory 10 cents and 15 cents, and at its prison from 15 cents to $1.30 per day; the larger amounts are earned by the prisoners at piecework. The New Jersey Reformatory pays 50 cents per day. Ohio, Pennsylvania, and the District of Columbia workhouses reported payment in abandonment cases only.[135]

The study of the proposed plan for paying prisoners at the House of Correction in Chicago shows that there are financial difficulties to be encountered in putting a plan in operation, but that these may be overcome if it is so desired.

The positive and negative discussion shows that there are two sides to the question of compensation to prisoners. But even so, there are some facts that carry a preponderance of weight before the bar of reason. These facts are now to be re-emphasized in the light of the purposes of penal labor.

In a lecture on "Prison Labor" some years ago Franz von Liszt said:

> "From its very beginning the modern prison presents itself under two aspects—deprivation of liberty and compulsory labor. Thus organized compulsory labor forms the essence of the institution of imprisonment, is its life principle, the element with which it stands or falls."

At the First Annual Meeting of the American Prison Association in 1870 (then the National Prison Association) a declaration of principles was drawn up. One of these principles presents labor as the basis of all reformatory discipline.

These statements present clearly the importance of labor in the institution of imprisonment. But as to the purpose of penal labor there is a variety of opinion. The view one holds with reference to penal labor has an important bearing upon the question of paying

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[134]Report of the American Prison Association, p. 15.

[135]Report of Com. on Compensation of Prisoners, A. P. A., 1917, p. 71.

prisoners. So a digression is made here to consider the objects of penal labor in order that the conclusions drawn may be in harmony with sound principles of penology.

The purpose most commonly ascribed to penal labor is that of punishment. The law reads: "Eighteen months' imprisonment at hard labor." This may be understood to imply that something unpleasant is being added to the imprisonment to make it more retributive and deterrent.

No doubt this wording of the law carries us back to the time when this was the chief end of penal labor. And irksomeness and monotony were sought and secured by setting tasks that were useless to society. So the treadmill, oakum picking and stone-crushing constituted "hard labor." Useful work was avoided for fear it might become interesting and lose its penal character.

This method of employing the prisoner did not produce the desired results. It may have been retributive, but it was not practically deterrent. It was wasteful of labor power and had a hardening effect upon the prisoner subjected to it. It also increased his dislike for work and so tended to make him more likely to remain in some form a burden to society.

The prisons themselves have contributed to the formation of another purpose. The modern prison system is expensive. The State is heavily burdened by its offenders. So whatever they can earn really and rightfully belongs to the State. The labor of its prisoners should not be wasted on useless tasks, but should be put to work producing for the State. Prisoners should contribute to their own support and reimburse the State for the cost their crimes have caused.

This maintenance purpose of penal labor makes a strong appeal to the taxpayer who has his gaze fixed upon the State budget. But he may fail to see that in the end that is not necessarily the most economical policy after all; that if the system fixes attention merely on the pecuniary conditions a gain may be secured that is penny-wise but pound-foolish. The labor of a penal institution may produce enough to meet all of its expenses and net a profit to the State besides and yet be unwise and uneconomical in the end.

The vocational aim is one that is often advocated for prison labor. The theory of the most ardent advocates of this object of penal labor is that the offender has come to his fate because he was unskilled; he had no trade and was therefore handicapped in the struggle to get a living. On his discharge from prison he ought to be a skilled workman, and then he will not relapse into crime, as he will be able to

support himself by honest industry. The prison should teach each inmate a trade.

The advocates of this theory apparently overlook the fact that the majority of workers are in a very real sense unskilled. This is no argument against the teaching of a trade; but it is a mistake to plead too strongly the lack of skill as a cause of crime.

For a limited class of offenders no doubt trade training is important. The young normal adults who have been committed for a period of time sufficiently long to enable them to profit by such training should receive it. But even for these, too much stress ought not to be laid upon giving technical skill for the following reasons:

The opportunity for a person trained in a penal institution to find work at a certain trade is limited. The Employment Bureau of the New York Prison Association advises men applying for work "to begin at the bottom of the ladder." "We regard it as most important," says the bureau, "that the man just from prison should, as soon as possible, be able to say that he is working somewhere and at something definite."[136] It is a difficult task to find "jobs" for ex-prisoners.

It sometimes happens that a man does not want to work at the trade that he learned in prison. The ideas associated with the work done in prison are repulsive to him. He wants to have no reminder of his days of punishment. In such cases trade training is useless so far as its practical value is concerned.

Another says that the object of penal labor is not so much to impart skill in special trades as to discipline mind and body. The prisoner has never learned the joy of continued successful effort. Hence his character needs to be formed. He lacks the power of attention and exactness because his faculties are undeveloped and he is wanting in self-direction and self-control. What he really needs is not skill, but character. The advocates of this purpose claim that if character is developed and the proper measures are taken to place the ex-prisoner in suitable surroundings, he is likely to become a decent and self-supporting citizen.

Others maintain that in addition to the above objects the labor of the prisoner ought to enable him to make reparation to those whom he has injured. The advocates of this purpose say that the surest basis for real reform for the prisoner is the consciousness that he has by his own efforts made right the wrong he has done as well as paid the penalty of the law. Others say that his labor ought to provide for his dependents and lay up something against the day of his release.

[136] Seventy-second Annual Report of the Prison Assn. of N. Y., 1916, p. 171.

With this review of the purposes of penal labor before us we may select the prime object of the institution of imprisonment and then determine the part a wage-paying scheme has in the realization of that end.

None of the above mentioned objects is irrelevant or immaterial; neither is any one of them sufficiently large. The object of the institution of imprisonment is the protection of society. The punishment or the reformation of the prisoner may be incidental to this end. Seemingly both are essential. Without penalty the law would be void. And without reformation imprisonment is corrupting.

Our present system of punishment is weak on its reformative side and strong in its corrupting tendencies.

All figures must be taken with a proper degree of allowance for suppressed or unaccounted for facts. But even so the following figures tell a tale on our system and its workings.

In Massachusetts recidivists furnish 57.6 per cent of sentenced prisoners and 91 per cent of all sentences for crime. It is estimated that in the nation at large there are 115,000 recidivists. This estimate is made on the basis of 400,000 criminals and 28.5 per cent recidivists.[137]

In England out of 168,260 convictions there were 104,171 at least for a second time and 12,133 had been previously convicted over 20 times a piece and the noted Jane Cakebread 280 times.[138]

Even if due allowance be made for the factor of feeble-mindedness among recidivists, still such facts as these indicate a serious lack on the part of our penal system. It works corruption to a large number of those whom it receives.

The mere introduction of a wage payment to prisoners into the present system will afford no real remedy. It is no panacea for this disease that is afflicting modern society. In fact there is a possibility that such a plan not properly adjusted to other features of the penal system may help men to become repeaters rather than to prevent them from such careers. The system of gratuities of the English System in the early part of the last half of the Nineteenth Century is believed to have worked to that end, as we have already seen in Chapter I.

The English prisons still gave some gratuities in 1910, but were seriously considering the abandonment of the plan.[139]

[137]Beyers: President's Address, Annual Congress of the Am. Pris. Assn., p. 23, 1915.

[138]Healy: "The Individual Delinquent," p. 10.

[139]The Sixty-seventh Annual Report of the Prison Association of N. Y., 1911, p. 165.

In Holland able-bodied vagrants are sentenced to two imprisonments: the one is penal and is followed by a period of detention for preventing a return to this manner of life. The "colonists," as the prisoners are called, may earn up to 25 Dutch cents a day (10 cents in our money), two-thirds of which may be used for buying articles.

Von Hippel is of the opinion that the plan is a failure. He says that "most begging and vagrancy occurs in those judicial districts where sentence to the colony is most likely. After leaving the colony the same career begins again, ending with a return to the colony."[140] His attack on the plan is not aimed at its pay feature necessarily, but at the mildness of the system.

In Germany there is a provincial workhouse called Brauweiler; its inmates are vagrants and "pimps." The industrious receive a daily gratuity of from three to fifteen pfennigs (¾ cent to 3¾ cents). They may use a part of this for the purchase of supplementary food, for the support of their families and for the purchase of additional clothing.

The results of the work of this institution are not very satisfactory from an educational and reformatory point of view. This is partly explained by the fact that many of the prisoners are middle aged. It does remove from the highways a large proportion of the vagrants who are a burden to society and employs them in a manner useful to the community in general.[141]

It is impossible to estimate the value of this method in our own system because of a lack of data. But there is no reason to believe that the results are any more satisfactory here than elsewhere. If this be the case we are brought face to face with the problem of finding a way that will work well. This is the task of administrators of prisons as well as of students of penology. Neither are left without experience to aid them, however. Many experiments have been tried and many useful and helpful things have been learned. The present need seems to be a successful combination of all the good features that are known into one centralized and unified system. The main features of such a system are: 1. Specialized institutions. 2. Classification of inmates. 3. Treatment for each class or type according to ability and needs. 4. Follow up work for discharged prisoners.

The sentenced offender would be sent to a clearing house. Here he would be placed in the hands of men trained and skilled in diagnosis and prognosis of offenders who would assign him to his proper class as, (1) normal young adult, (2) normal prisoner, mature, middle or aged,

[140]Ibid., pp. 102-111.
[141]Ibid., p. 131.

(3) insane delinquent, (4) defective delinquent, (5) or psychopathic delinquent, etc. The normal young adults would be assigned to the reformatory, the normal prisoners to an industrial prison, the insane to the hospital for criminal insane, the defective delinquents to an institution for feeble-minded criminals where they would remain wards of the State, the psychopathics to a ward or an institution fitted for their care and treatment.

The place of a wage-paying plan in such a system is all that can be dealt with further in concluding this discussion. It is concerned only with normal adults.

The proportion of the prison population that is classified as normal is not definitely known. Mr. B. G. Lewis, Commissioner of Correction for the City of New York, estimates that about one-third of the ordinary prison population is made up of men and women who have been unfortunate, who are capable and desirous of doing better, and who will do better if given an opportunity. They are the willing workers who seize every opportunity to better their condition and even endeavor to create an opportunity where none exists.

This estimate may be too large or too small. But that is immaterial. If such a class of persons exists among the prisoners, who can deny them the opportunity they seek? To refuse these an opportunity to work and earn a wage is suicidal. It means the atrophy of their faculties and the deadening of their sensibilities.

The fact that this class is willing and desirous and to a degree capable does not mean that they are highly competent. They may have incompetencies; the way to remove these is by training and directing them in self-activity. The opportunity for remedying these defects of character and training is made possible by the wage-paying plan of prison industries as a part of a carefully correlated system.

Another class which comprises in Mr. Lewis' opinion from one-third to one-fifth of the prison population is capable but unwilling; they willfully and perversely choose a life of crime. A wage-paying plan can hold out to such an incentive to co-operate with the authorities or suffer for a refusal to do so. If the co-operation of these can be won there is hope of reformation on their part. For they regard work as unnecessary and personal responsibility as a burden improperly imposed by social conditions. One cannot earn without assuming responsibility, exercising care and working. This class needs the development that comes from industry with the incentive of pay. It does not merit such opportunities. Perhaps it may deserve the lash.

But the sure way to protect society against this class is to win men from its ranks and prevent others from entering it.

The protection of society is the end of the institution of imprisonment and the reformation of the offender is the only sure way to achieve that end with those already engaged in crime. Probably one-half of those in prison at present would benefit by the opportunity offered by prison industries managed for the welfare of the prisoner.[142]

Men in the ordinary conditions of life have motives for exercising diligence, skill and intelligence in order to make their labor valuable. These same motives must be supplied in the unusual conditions of prison life if men are not to be unfitted for living again in the world of industry outside prison walls.

There are many causes assigned for the return of so considerable a proportion of prison inmates to crime after their release. Feeblemindedness is responsible for some. (Byers estimates that the feebleminded recidivists of Massachusetts were responsible for more than 18% of the detected and punished crime of that State in 1914. There seems to have been a tendency to overestimate this factor.) Industrial incompetency and instability of character as shown in lack of responsibility and want of discipline and in disorderly habits are also causes. For these last named causes there is a cure.

Dr. C. E. Sceleth, recently Medical Superintendent of the House of Correction and Sceleth Emergency Hospital of Chicago, says:

> "I believe that if many of us who are classified as normal and are fairly successful in life, were subjected to the same environment and conditions that some of our habitual criminals have to contend with, we would be recidivists today."[143]

An environment as nearly normal as possible needs to be created and the criminal given every incentive to react rightly under skilled guidance to these surroundings.

Someone asks: Do you not make it easy for men to do wrong by paying them for receiving their penalty of their crimes? What is there to deter men from crime if criminals are paid a wage? The reply to this is: save a man's honor and he will be deterred. Destroy his honor and no deterrent is possible. Or if he has lost his honor restore it as quickly as possible. Here is the only hope.

[142]Dr. Fernald states that according to findings at the Massachusetts Reformatory 25 per cent of criminals are mentally defective, about 75 per cent of prisoners are to be regarded as of competent mentality and fully responsible, or only subnormal. Fernald: "The Recidivist." Journal of American Institute of Criminal Law and Criminology, Vol. 3, p. 866.

[143]This JOURNAL, Vol. 5, 416.

Another feature of the problem of punishment of offenders is its effect upon the dependents of the prisoners. It may be impossible to inflict any penalty for violation of the law and not cause the innocent to suffer. But such suffering should be reduced to a minimum. To imprison a man who has been supporting his dependents and leave them to the mercy of charity is unjust.

The size of the class that is affected by the imprisonment of breadwinners is a matter of conjecture. Mr. E. F. Lyon says that a fair average of all the prisoners would probably indicate that about 25 per cent of all prisoners had been contributing some measure of support to others and that fully 50 per cent are in reality under moral obligation to kindred of some kind.[144]

Dr. Carol Aronvici of Philadelphia found upon investigating 167 cases of men serving time in a workhouse in a large city, that 43 of these men had one or more dependents; that the number of dependents amounted to 109 persons, 46 of whom were wives, 8 were mothers and fathers and 65 were children under 15 years of age, 83 of these 109 dependents were not living upon the earnings of their wage earner, who was working daily for a profit to the institution, but they were living off the relief that was given them by charitable agencies.[145]

A wage-paying scheme for prisoners makes it possible for those having dependents to continue to help support them. In fact the law requires a man to support his dependents while he is at liberty. Its execution should make this possible while he is in confinement.

It is not within the province of the student in his study to formulate programs that are designed to meet actual conditions; such programs must be worked out in connection with the concrete situation. But some features of a wage-payment scheme are evident from this investigation and may be summarized here as follows:

1. Wage-payment is restricted to selected groups of prisoners; mental defectives, men physically unable to work, and those serving short-time sentences are excluded.

2. The gradation of wage-payment is to be adopted to the concrete situation.[146]

[144]This JOURNAL, Vol. 3, p. 36.

[145]Schreiber: The Payment of Wages to Workhouse Prisoners. Proceedings of the National Conference of Charities and Correction, 1915, p. 389. The figures here given are evidently wrong; they appear as given here in the source quoted, but the number of wives must be 36 instead of 46. This correction would make the total number of dependents 109, as given, and also make it unnecessary for any of the men to have more than one wife.

[146]Randall, Chairman, Massachusetts Prison Commission, suggests that the allowances made to prisoners in cash credits and their expenditure be regulated according to their real and proper needs, and that a fund be established from

3. From the standpoint of the reformation of the offender, wage-payment is desirable without regard to the profits of the penal institution. If profits, from a consideration of expediency or actual situation, are made the basis of compensation, a period of years rather than the fiscal year should be taken.

4. A scheme for the payment of earnings to the prisoner at the expiration of his sentence should be worked out in connection with a plan of after care.

5. The earnings of the husband and father should be paid to his dependent wife and children and should be supplemented by mother's pension.

6. Vocational training should not be sacrificed to wage-payment in the case of minors or other prisoners capable and desirous of receiving trade instruction.

To facilitate the securing of a comprehensive and adequate prison labor system with proper compensation to prisoners, certain constitutional and legislative changes may be necessary.

This program considers only the industrial side of the prison for normal adults. This feature of the institution should be supplemented by educational, religious and recreational activities. But as in normal conditions a man's job is an essential part of his life so in prison a full recognition of its importance should be made.

The worst enemy society can have is a class that has nothing to lose. Our present system of penal labor without compensation works in two ways to create such a class. In the first place it takes a man away from his job and sets him at a task for the performance of which he receives only a bad name. In the second place it takes away the support from the prisoner's wife and children. From the effects of this treatment the convict and his family rarely recover.

APPENDIX A.

From the viewpoint of the institution I have found no plan seemingly more acceptable than that in use in the Detroit House of Correction. Its essential features are as follows: The inmates are assigned to three classes. The compensation is respectively twenty, fifteen and ten cents per

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which aid may be given by the prison authorities, in suitable cases, to the innocent dependents of prisoners, quite regardless of the conduct or services of the prisoner while under confinement, but wholly regardful of the needs and merits of their unfortunate situation. Proceedings of the National Conference of Charities and Corrections, 1915, p. 395.

Minnesota prison pays a wage to the prisoners and it also pays the families of the prisoners a sum to take care of their wives and children. These are also provided for by a mother's pension.

day according to the term of sentence for which they are committed, and taking into consideration their willingness, industry and good conduct. This applies to all who are committed to the institution for periods of not less than thirty days and remain imprisoned for that length of time.

Inmates assigned to the first class are those serving sentences of one year or more, who are of fair mental and physical ability, capable of performing a reasonable day's work, and whose general conduct is such as to warrant the belief that they are desirous of improving their present condition and by co-operation with the management, aid and assist in the general order, discipline and operation of the industries carried on in the several departments, to each inmate of this class there shall be placed to his or her credit the sum of twenty cents for each full day's work performed.

Inmates of the second class are those whose sentences are for periods of six months or more, and less than one year, and to each inmate of this class the sum of fifteen cents for each full day's work performed shall be credited under the same conditions as apply to inmates of the first class.

Inmates of the third class are those whose sentences are for less than six months and not less than thirty days. Each inmate of this class is credited with ten cents for each full day's work performed under the same conditions as apply to inmates of the first class.

Those incapable, through physical or mental disability, of performing a reasonable day's work, or those incorrigibles who fail to show a proper disposition to co-operate in the general welfare of the inmates as outlined above, shall have assigned to them either a smaller per diem amount or may be refused any remuneration whatever for their labor, as the circumstances surrounding each particular case shall warrant.

Those incapacitated through sickness, prisoners who work but part of a day, and those who fail to perform what is considered a reasonable day's work, as well as those reported for any infraction of the rules, shall forfeit the pay for that day.

Money credited to prisoners may be paid over to their families or may be used by the prisoners to purchase for their own use books, magazines or such articles as may be approved by the superintendent. The main object of this provision is to furnish prisoners with sufficient capital on their release to enable them to maintain themselves while seeking employment and so remove the necessity of their seeking aid at the hands of former criminal companions with the probability of their again entering upon a life of crime through evil companions. If a man has a family his earnings are expected to be used in its support. This plan was adopted in 1901 and it worked so well from the administration's point of view that it was extended in 1910. At first prisoners were paid only ten, seven and five cents per day respectively, but this was increased in 1910 to twenty, fifteen and ten cents.

Each prisoner is given a card which reads as follows:

"Under the system of operation employed in this institution inmates committed for periods of thirty days or more, who by their *willingness, industry,* and *good conduct* show a desire to improve their condition, may be rewarded by having a stated sum ranging from ten to twenty cents per

day (according to their sentence), placed to their credit, and which will be paid over to them at the time of their release. It is hoped that you will take advantage of this opportunity and so conduct yourself as to permit of our rewarding your efforts, so that when you leave the institution you will have the means to assist you in obtaining a new start.. *It rests with yourself.*"[147]—JOHN MCDONELL, Supt.

The Fifty-first Annual Report[148] shows that the institution had a net profit of $6,493.55 after disbursing $13,640.33 to prisoners under the co-operative system. This institution also pays over to the Board of Poor, according to ordinance, $5,000 annually. This sum is distributed for the benefit of families of prisoners while the husband or father is confined in the House of Correction. Thus we see that the profits over cost of maintenance are practically distributed and used for the benefit of the inmates and their families instead of, as formerly, being paid into the city treasury.

During the year 1912, $6,652.21 were distributed among families of the Detroit House of Correction prisoners. This money went to 139 families, the members of which totaled 579.

During the previous year the earnings received by families of men sent to the Detroit institution amounted to $3,355.50, the money going to 88 families or 360 persons.

The increase in the last year, the second year the plan has been in effect, was $3,296.71 in earnings of dependent ones. Fifty-one more families received benefits than during the previous year.[149]

The increase in the number of persons participating in the earnings was 214.

The Fifty-fourth Annual Report shows that after the payment of $14,701.55 to the prisoners under the co-operative system, and $3,109.87 for repairs and final payments on the new dormitory building, there remains a net profit from the year's co-operation of $46,086.94. Ten thousand dollars of this amount was paid to the Board of Poor Commissioners of the City of Detroit, as provided by city ordinance, to be used by them as required for the benefit of families of prisoners in need of assistance.[150]

The following statement by Mr. Eaman, of the Board of the State of Michigan, explains in a measure the success of the Detroit plan.

"In the House of Correction at Detroit a large source of income consists of contracts from various counties of the State that have no workhouse, no House of Correction; they contract with the City of Detroit for the care of their prisoners, and the city makes a profit from the custody of the prisoners and still has their labor."[151]

Although the Detroit plan works well it still has some defects that should be eliminated.

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[147]The 49th Annual Report of the Detroit House of Correction for the year 1910, pp. 31-40.

[148]For the year 1912, pp. 7, 8.

[149]The Review, Vol. II, No. 12, Dec., 1912, p. 42.

[150]Fifty-fourth Annual Report of the Officers of the Detroit House of Correction, 1915, p. 6.

[151]Jnl. of Criminal Law and Criminology, Vol. VI, p. 518.

We have already observed some of the evils that result from a prisoner having funds to use as he pleases when he is discharged. Experience has proven that this is in many instances not best either for the prisoner or for society. In Germany this evil is avoided by sending the amount to the prisoner's credit at his release to some competent person or association to use or direct him in using for his benefit, when in the director's judgment the prisoner would make a misuse of his earnings.[152] The plan of paying part at discharge and then conditioning the paying of any more upon the basis of the prisoner's conduct appeals to me as a wiser provision. This offers an incentive to the prisoner to live right during the early months of his release. The State should permit the prisoner to receive pay either during his sentence, at his discharge or after his discharge only on such conditions as will insure its being put to a proper use.

Another defect in the Detroit House of Correction system is that of determining the amount to be paid principally by the length of the convict's imprisonment. The long term prisoner is undoubtedly more productive financially as a rule. But the classification of inmates ought to be based on conduct, ability to work and actual production rather than on length of sentence.

Several States, Michigan and Missouri, for example, assign the convict certain tasks as a day's work and permit him to have put to his credit all that he earns by his work after these tasks are performed. There are serious objections to such setting of tasks. The amount of work that the average man can accomplish is not a fair standard for every man. Some men are able to do much more than other men. Those able to do more than the average man benefit financially by the "stint," but the undersized and weak men suffer from it. It is unfair to the strong man, for more ought to be required of him; it is unfair to the weak man because he ought not to be required to do so much. Where the "stint" is set the danger of wronging men is great.

State penitentiaries, reformatories and Houses of Correction should be run on a profit-sharing basis. The prisoner should be charged for his board and clothes and other necessary expenses. The profits derived from his earnings after his expenses are met should be divided between him and the state. Someone may say: "There are no such profits in many state penal institutions." Where this is the case something is wrong about the administration and management on the state's part. If one such institution can be run on a basis that will save the state expense and pay the prisoner a part of his earnings, others can be too. We have seen that this is being done in some places.

The rate of pay for a prisoner should be based on the value of the work he performs, the willingness with which he works, and the man's need. If he has dependents who would become state charges, or who would otherwise suffer because of their being deprived of his support his pay should be proportionally larger. The state should reserve the right of administering any or all the prisoner's earnings, both while he is serving his sentence and after his release, if in the judgment of its agents it is wisest to do so.

These are provisions which experience has proved to be necessary and practicable.

[152]Aschaffenburg, p. 278. Op. Cit.

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